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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1935.

## No. 37

D. DEL VECCHIO, TRADING AS PEOPLES HARDWARE STORES, AND MERCHANTS MUTUAL CASUALTY COMPANY, PETITIONERS,

*vs.*

BONNIE L. BOWERS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

PETITION FOR CERTIORARI FILED MAY 1, 1935.

CERTIORARI GRANTED MAY 27, 1935.

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1934

# No. 931

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D. DEL VECCHIO, TRADING AS PEOPLES HARDWARE STORES, AND MERCHANTS MUTUAL CASUALTY COMPANY, PETITIONERS,

*vs.*

BONNIE L. BOWERS

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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[fol. 1]

**IN SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT**

Equity. No. 56485

BONNIE L. BOWERS, Plaintiff,

vs.

ROBERT J. HOAGE, Deputy United States Employees' Compensation Commissioner for the District of Columbia; D. DEL VECCHIO, Trading as Peoples Hardware Stores; and MERCHANTS MUTUAL CASUALTY COMPANY, a Corporation, Defendants

BILL FOR INJUNCTION—Filed February 27, 1934

To The Supreme Court of the District of Columbia, Holding an Equity Court:

The Bill of Complaint of Bonnie L. Bowers respectfully shows to this Honorable Court as follows:

1. That she is a citizen of the United States and a resident of the State of Alabama, and files this Bill in her own right.

2. The defendant, Robert J. Hoage is a citizen of the United States and a resident of the District of Columbia, and is sued as Deputy United States Employees' Compensation Commissioner for the D[illegible]ct of Columbia; the defendant, D. Del Vecchio is a citi[illegible]f the United States and a resident of the District of Columbia, and is sued in his own right as the employer hereinafter set forth; that the Merchants Mutual Casualty Company is a corporation, organized and existing under and by virtue of the laws of the State of New York, and engaged in business in the District of Columbia, and is sued as the insurance carrier as hereinafter set forth.

[fol. 2] 3. That heretofore, to wit, on the 10th day of September, 1931, one Jeff Bowers, husband of plaintiff, then a resident of Mt. Rainier, Maryland, was in the employ of the said defendant, D. Rel Vecchio, who operated a chain of hardware stores in the District of Columbia,

under the trade name of Peoples Hardware Stores; the said Jeff Bowers being the manager of one of said stores, located at 1311 Seventh Street, N. W., in the District of Columbia.

4. Pursuant to the provisions of the Act of Congress approved May 17th, 1928 (Public No. 114), and the Provisions of Section 32 (a) (1) of the Act of Congress approved March 4th, 1927 (Public No. 803), said defendant, D. Del Vecchio, had on said 10th day of September, 1931, and there was in force, a policy of insurance issued by the defendant, Merchants Mutual Casualty Company, to insure the payment of compensation under said Acts of Congress.

5. That on the said 10th day of September, 1931, the said Jeff Bowers, during the course of his employment, and at the place of his employment, to wit, in said hardware store, located at said premises, 1311 Seventh Street, N. W., Washington, D. C., was found in a dying condition as a result of a gun shot wound, and from which he died within about an hour at Casualty Hospital in the District of Columbia.

6. That said Jeff Bowers was survived by his widow, the plaintiff, Bonnie L. Bowers, who was born on the 17th day of March, 1907, and a minor child, Jefferson A. Bowers, born on the 19th day of February, 1930; that the average earnings of the said Jeff Bowers for the year preceding his death, amounted to approximately Thirty-five ($35.00) Dollars per week; that there were no other dependents of the said Jeff Bowers within the meaning of said Act.

[fol. 3] 7. That on or about the 2nd day of November, 1931, due notice of death and claim for compensation was given to the defendants, D. Del Vecchio and Robert J. Hoage, Deputy Commissioner as aforesaid, as required by law on behalf of the plaintiff and said minor child, Jefferson A. Bowers.

8. Thereafter, on, to wit, the 5th day of January, 1932, the defendant, Merchants Mutual Casualty Company, notified the plaintiff and the defendant, Robert J. Hoage, Deputy Commissioner, that the question of its liability under the law would be controverted.

9. Thereafter, on, to wit, the 22nd day of January, 1932, pursuant to due notice to all parties in interest, a hearing was commenced before the defendant, Robert J. Hoage,

Deputy Commissioner as aforesaid, which hearing was continued to and concluded on January 29th, 1932.

10. At said hearing, it was admitted on behalf of the defendants that the defendant, D. Del Vecchio, as employer, was subject to the provisions of the District of Columbia Workmen's Compensation Act at the time of the alleged injury; that Jeff Bowers, the deceased, was in the employ of the defendant, D. Del Vecchio, on September 10th, 1931, and that he was rendering services for the defendant on that date; that the employer, the defendant, D. Del Vecchio, had knowledge of an injury sustained by Jeff Bowers on the 10th day of September, 1931, within thirty (30) days of its alleged happening; that the annual earnings of Jeff Bowers for the year preceding his death were Seventeen Hundred and Eighty-three and 86/100 ($1783.86) Dollars, working six (6) days a week; that the burial expenses exceeded Two Hundred ($200.00) Dollars, which were paid by the plaintiff; that the plaintiff was the surviving wife of the deceased, and that Jefferson Albert [fol. 4] Bowers is the surviving child of the deceased, born on February 19, 1930; that Jeff Bowers sustained an injury by a gun shot wound, from which he died, on the 10th day of September, 1931. The defendants, however, denied that the deceased sustained an injury arising out of and occurring in the course of his employment, within the meaning of the provisions of the District of Columbia Workmen's Compensation Act.

11. Thereafter, under date of the 15th day of February, 1932, the defendant, Robert J. Hoage, Deputy Commissioner as aforesaid, made and filed his Order rejecting plaintiff's claim, said Order being in words and figures as follows:

"United States Employees' Compensation Commission,
District of Columbia Compensation District

In the Matter of the Claim for Compensation under the District of Columbia Workmen's Compensation Act

Case No. 1960-6

Mrs. Bonnie L. Bowers, Claimant,

vs.

D. Del Vecchio, t/a Peoples Hardware Stores, Employer; Merchants Mutual Casualty Company, Insurance Carrier

Compensation Order—Rejection of Claim

Such investigation in respect to the above-entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following

Findings of Fact

That on the tenth day of September, 1931, Jeff Bowers, hereinafter known as "employee", was in the employ of the employer above named as a clerk in a hardware store at 1311 7th Street, N. W., Washington, District of Columbia; that on said day, during the course of his employment, the employee was found in a dying condition as a result of a gun shot wound from his own revolver; that the shot had penetrated the employee's chest and gone through his body; that as a result of the wound the employee died almost instantly; that the claimant above named failed to establish by evidence that the duties of the employee required the use of a gun or that in using the gun at the time the employee was in any way furthering his master's interests, or that the injury resulting in death arose out of his employment.

Upon the foregoing findings of fact, it is ordered by the Deputy Commissioner that the claim be and it is hereby [fol. 5] rejected for the following reason:

That the claimant herein failed to establish by evidence that the injury and death of the employee above named arose out of his employment.

Given under my hand, at Washington, D. C., this fifteenth day of February, 1932.

S.) R. J. Hoage, Deputy Commissioner, District of Columbia Compensation District.

Proof of Service

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant, the employer, the insurance carrier, the attorney for the claimant, and the attorney for the respondent, at the last known address of each as follows:

| Name. | Address. |
|---|---|
| Mrs. Bonnie L. Bowers | 3203 Perry Street, Mt. Rainier, Md. |
| D. Del Vecchio, t/a Peoples Hardware Stores | 1434 Florida Ave., N. E., Washington, D. C. |
| Merchants Mutual Casualty Co. | 218-220 Mills Building, Washington, D. C |
| Attorney Chapin B. Bauman | 600 F Street, N. W., Washington, D. C. |
| Attorney James E. McCabe | Transportation Building, Washington, D. C. |

(S.) R. J. Hoage, Deputy Commissioner.

Mailed February 15, 1932"

12. Thereafter, under date of the 3rd day of March, 1932, within the time allowed by law, the plaintiff filed her Bill in the Supreme Court of the District of Columbia, Holding An Equity Court, the same being Equity Cause No. 54081, to set aside the said Order of the Deputy Compensation Commissioner, dated February 15th, 1932, rejecting her claim and denying compensation, and for a mandatory Writ of Injunction requiring the defendant, Robert J. Hoage, Deputy Commissioner as aforesaid, to make an award in favor of plaintiff, and said minor child, on the grounds that the award rejecting said claim was not in [fol. 6] accordance with law. The defendants to said Bill, being the same defendants hereto, moved to dismiss said Bill, and after a hearing on said motion, the Supreme Court of the District of Columbia overruled the same, and the defendants electing to stand upon their said motions to dismiss and not to plead over, said Court by its decree dated the 21st day of July, 1932, overruled said motions, set aside the compensation order of February 15th, 1932, as not being in accordance with law, and directed said Deputy Commissioner to make a compensation order, with appropriate findings of fact, awarding compensation to the plaintiff and her minor child, in accordance with Section 9 of the Compensation Act.

13. From the foregoing decree the defendants to said Bill, D. Del Vecchio, trading as Peoples Hardware Stores, Employer, and Merchants Mutual Casualty Company, In-

surance Carrier, appealed to the Court of Appeals of the District of Columbia. On November 13th, 1933, the Court of Appeals of the District of Columbia, in its Case No. 5809, in the Court of Appeals of the District of Columbia, entitled D. Del Vecchio, trading as Peoples Hardware Stores, and Merchants Mutual Casualty Company, a corporation, Appellants, vs. Bonnie L. Bowers, Appellee, reversed in part and affirmed in part the decree of the Supreme Court of the District of Columbia, dated July 21st, 1932, in Equity Cause No. 54081, directing the Supreme Court to set aside said decree insofar as the same directs the Deputy Commissioner to make a compensation award and to remand the case to the Deputy Commissioner with instructions to find the facts as to the claim of suicide.

14. On December 20th, 1933, pursuant to the mandate of the Court of Appeals, the Supreme Court of the District of Columbia, Holding An Equity Court, in said Equity Cause No. 54081, by its decree vacated and set aside its previous decree of July 21st, 1932, insofar as the same directed the Deputy Commissioner to make a compensation award, and remanded the case to the defendant, Robert [fol. 7] J. Hoage, Deputy Commissioner, Employees' Compensation Commission, to find the facts as to the claim of suicide.

15. Thereafter, on, to wit, the 30th day of January, 1934, the said defendant, Robert J. Hoage, Deputy Commissioner as aforesaid, purporting to act pursuant to said decree of the Supreme Court of the District of Columbia, dated December 20th, 1933, entered a compensation order, entitled Rejection of Claim, wherein after setting forth the previous proceedings, proceeded to make his award without finding the facts as to the claim of suicide, as directed by the Court of Appeals, of the District of Columbia, and the Supreme Court of the District of Columbia in the following words:

"After reviewing the testimony in the above entitled case, it is now found by the Deputy Commissioner that the employee, Jeff Bowers, who died on September 10th, 1931, came to his death, by a gun shot wound of the chest by his own hand, as a result of willful intent on his part to injure or kill himself, and that said injury and death therefore, while arising in the course of his employment, did not arise

out of the employment; that in accordance with Section 3 (b) of the Act, no compensation is payable.

Upon the foregoing findings of fact, it is ordered by the Deputy Commissioner that the claim for compensation be, and the same hereby is rejected for the following reason:

That the employee's death was the result of his willful intent to injure or kill himself, and that said injury and death did not arise out of his occupation."

16. That the undisputed facts established by the plaintiff at said hearing before the Deputy Commissioner, and contained in the transcript of testimony taken at said hearing, which is hereby referred to and made a part hereof, were as follows:

That the deceased, Jeff Bowers, had been in the employ of the defendant, D. Del Vecchio, for about three (3) years preceding his death. For about one (1) year preceding his death, he had been the manager of the defendant's store [fol. 8] located in the 1300 block of Seventh Street, N. W., in the District of Columbia. This store is located in a tough, dangerous neighborhood, predominantly colored, where fights and robberies are frequent. His hours of employment kept him at the store until about 7:30 o'clock P. M., on weekdays, and until 10 o'clock on Saturday nights. On the morning of September 10th, 1931, the deceased opened the store as usual, and found that the night before there had been an attempted robbery of the defendant's warehouse, immediately back of the store. A carpenter who had been in the habit of purchasing merchandise at this store, and who knew the deceased, called at the store on that morning to make a purchase. The deceased requested him to repair the damage to the doors of the warehouse, which had been badly damaged in the attempted robbery the night before. About 10:15 o'clock that morning, the carpenter, one John Hoffman, while in the course of repairing the damage to the doors, came into the front part of the store and found Mr. Bowers lying on the floor unconscious, with a gun shot wound in his chest and back. Mr. Bowers was taken to Casualty Hospital in this city, where he died within an hour or so without regaining consciousness. There was no eye-witness to the accident. The wound was inflicted by a revolver belonging to the deceased, which he kept in a drawer of one of the counters

in the store. The deceased never kept a revolver at his place of business until he came to manage the Seventh Street store, but had had one at the Seventh Street store during the entire time that he worked there, which was a period of about one (1) year. The previous manager of this particular store kept a revolver there constantly. The defendant, owner of the store, had had considerable trouble in getting managers to stay at this store because of the character of the neighborhood. The owner knew that the previous manager of this store had kept a gun there and [fol. 9] that the next preceding manager, during the Christmas week, carried a gun on his person. The defendant knew this and permitted it on account of the neighborhood. The defendant did not know that Mr. Bowers kept a gun, but would have permitted him to do so.

The defendant had never given the previous managers explicit permission to keep a gun, but knew that they had one there, and never objected to it. It was customary for managers of that particular store to have a gun, and it was not against any regulations.

That Mr. Bowers was of a cheerful, jolly, happy disposition; that he never seemed despondent, melancholy or depressed, and that his cheerful disposition continued right up to the morning of his death; that his married life was happy; that he and his wife were loving and affectionate towards each other; and always got along all right together; that he was very fond of their child; that deceased at the time of his death, was not in debt, with the exception of a small doctor's bill, and a small balance owing on an automobile which he was purchasing on the installment plan, and had more than sufficient money in bank to cover both of these; that his rent was paid, and that his accounts with his employer were in perfect condition. That the deceased had written his mother, who lived in Goshen, Alabama, a natural, normal letter on the night preceding his death, and had mailed it on the morning of his death. The letter gave no intimation whatever of an intention to commit suicide.

17. That the only testimony adduced by the defendants on the question of suicide, was evidence tending to prove that the deceased had undergone a mastoid operation some two years previous to his death, and that about a month previous to his death he had again consulted a physician rela-

tive to this ear trouble, and the further testimony of several members of the Police Department and the Coroner of the [fol. 10] District of Columbia, consisting of circumstantial evidence tending to prove the direction which the bullet took, and that the gun was discharged at close range; and which evidence was as consistent with the theory of accident as with that of suicide.

18. The plaintiff further respectfully states to this Honorable Court that the said Order of the defendant, Robert J. Hoage, Deputy Commissioner as aforesaid, dated January 30th, 1934, entitled Compensation Order Rejection of Claim, is not in accordance with law and/or the decree of the Supreme Court of the District of Columbia, dated December 20th, 1933, in that there was not substantial evidence to the contrary, as required by Section 20 of the Longshoremen's and Harbor Workers' Compensation Act, to overcome the presumption against suicide, as provided in said Section 20 of the said Act, and further that the said Deputy Commissioner did not find the facts as to the claim of suicide in accordance with said decree of the Supreme Court of the District of Columbia, dated December 20th, 1933.

Wherefore, the premises considered, plaintiff prays:

1. That the United States Writ of Subpoena issue against the defendants, requiring them by a day certain to be named therein, to appear herein and answer the exigencies of this Bill of Complaint.

2. That said Order, dated January 30th, 1934, entitled Compensation Order Rejection of Claim, be set aside, in whole, and that this Court by its mandatory Writ of Injunction, direct and command the said defendant, Robert J. Hoage, Deputy Commissioner as aforesaid, to make an award in favor of this plaintiff and said minor child, in accordance with said Acts.

3. That this Honorable Court direct the said defendant, Robert J. Hoage, Deputy Commissioner as aforesaid, to transmit to this Court a full and complete transcript of all the records, papers, orders and testimony taken before him in this case.

[fol. 11] 4. That the plaintiff may have such other and further relief as the nature of the case may require, and to this Court may seem just and proper.

Bonnie L. Bowers.

Chapin B. Bauman, Attorney for Plaintiff.

*Duly sworn to by Bonnie L. Bowers. Jurat omitted in printing.*

Fiat

Let this Bill be filed without prepayment of costs. Feb. 27, 1934.

Daniel W. O'Donoghue, Justice.

---

[fol. 12] In Supreme Court of District of Columbia

Motion of Defendant Hoage to Dismiss Bill of Complaint

Filed March 20, 1934.

* * * * * * *

Now comes the defendant, Robert J. Hoage, Deputy Commissioner, United States Employees' Compensation Commission, by his attorneys, and moves this Honorable Court to dismiss the bill of complaint filed herein for the following reasons:

1. That the bill of complaint filed herein does not state a cause of action and does not entitle the plaintiff to any relief in law or equity.

2. That the bill of complaint, including the transcript of testimony, made a part of the bill by reference, shows that the findings of fact and order of the deputy commissioner, as contained in the compensation order, rejection of claim, filed January 30, 1934, also made a part of the bill by reference, are supported by evidence and that the compensation order is otherwise in accordance with law.

3. That the action taken by the deputy commissioner which resulted in the filing of the compensation order of January 30, 1934, complained of in the bill, conforms to the decree of this Honorable Court entered December 20, 1933, in Equity cause No. 54081.

4. For such other good and sufficient reasons as may be shown.

Leslie C. Garnett, United States Attorney; John J. Wilson, Assistant United States Attorney; Attorneys for Defendant, R. J. Hoage.

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[fol. 13] In Supreme Court of District of Columbia

Memorandum of Points and Authorities in Support of Motion to Dismiss Bill

Filed March 20, 1934

* * * * * * *

There are only two questions for the determination of the court in this case; namely, (1) whether the findings of fact in the compensation order, rejection of claim, filed January 30, 1934, complained of in the bill, are supported by competent evidence, and (2) whether the deputy commissioner found the facts in said order as to the claim of suicide, in accordance with the decree of the Supreme Court of the District of Columbia, dated December 20, 1933, in Equity cause No. 54081.

It is the contention of the defendant Hoage that the plaintiff is not entitled to any relief under the law, and that the bill of complaint is subject to a motion to dismiss for the following reasons: (a) That the findings of fact of the deputy commissioner in this case are supported by competent evidence and should be regarded by the court as final and conclusive; (b) That action taken by the deputy commissioner which resulted in the filing of the compensation order of January 30, 1934, complained of in the bill, conforms to the decree of this Honorable Court entered December 20, 1933, in Equity cause No. 54081.

It is a well-established and fundamental rule of law in compensation cases that the facts found by the compensation administrator or board are not reviewable upon appeal or review by the courts where there is any competent evidence to support the findings so made, and the courts have consistently refused to disturb the findings of fact unless it is clearly shown that they are not supported by any evidence, and for that reason are "not in accordance

with law." The findings of fact of the deputy commissioner upon matters relative to claims arising under the Compensation Act in force in the District of Columbia are final and conclusive where supported by any evidence. [fol. 14] The Act does not authorize the court to reweigh the evidence where more than one inference may be drawn therefrom, to arrive at a different conclusion from that found by the deputy commissioner.

The law is well settled in this respect in this jurisdiction by the following cases: Voehl v. Indemnity Insurance Company of North America, 53 S. C. R. 380, 288 U. S. 162, decided February 6, 1933; New Amsterdam Casualty Company v. Hoage, deputy commissioner, 62 Fed. (2d) 468, certiorari denied February 20, 1933, 53 S. C. R. 400, 288 U. S. 608; Hoage, deputy commissioner v. Employers' Liability Assurance Corporation, Ltd., 64 Fed. (2d) 715, certiorari denied October 9, 1933, 54 S. C. R. 54; Powell v. Hoage, deputy commissioner, 57 Fed. (2d) 766, decided March 21, 1932; Crowell, deputy commissioner v. Benson, 285 U. S. 22, 52 S. C. R. 285, decided February 23, 1932; Jules C. L'Hote, et al v. Crowell, deputy commissioner, 286 U. S. 528, decided April 25, 1932.

An examination of the transcript of testimony of the hearing before the deputy commissioner on January 22 and January 29, 1932, made a part of the bill by reference, discloses fully that there was competent and substantial evidence to support the deputy commissioner's findings of fact, and therefore, under the above authorities, said findings should be regarded as final and conclusive.

The history of the litigation in this case, including copy of this Honorable Court's decree, signed by Mr. Justice Adkins, and entered on December 20, 1933, in Equity cause No. 54081, and the findings of fact of the deputy commissioner thereunder, is given in the compensation order, rejection of claim, filed January 30, 1934, reading as follows:

[fol. 15] "United States Employees' Compensation Commission, District of Columbia Compensation District

Compensation Order. Rejection of Claim. Case No. 1960-6

"In the matter of the claim for compensation under the District of Columbia Workmen's Compensation Act.

MRS. BONNIE L. BOWERS, Claimant,

vs.

D. DEL VECCHIO, t/a Peoples Hardware Stores, Employer; Merchants Mutual Casualty Company, Insurance Carrier

"Such investigation in respect to the above-entitled claim having been made as was considered necessary and a hearing having been duly held in conformity with law, the Deputy Commissioner filed a compensation order on February 15, 1932, which reads as follows:

'United States Employees' Compensation Commission,
District of Columbia Compensation District

Compensation Order. Rejection of Claim. Case No. 1960-6

'In the matter of the claim for compensation under the District of Columbia Workmen's Compensation Act.

MRS. BONNIE L. BOWERS, Claimant,

vs.

D. DEL VECCHIO, t/a Peoples Hardware Stores, Employer; Merchants Mutual Casualty Company, Insurance Carrier

'Such investigation in respect to the above-entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following

'Findings of Fact

'That on the tenth day of September, 1931, Jeff Bowers, hereinafter known as "employee," was in the employ of the employer above named as a clerk in a hardware store at [fol. 16] 1311 7th Street, N. W., Washington, District of Columbia; that on said day, during the course of his employment, the employee was found in a dying condition as a result of a gun shot wound from his own revolver; that the shot had penetrated the employee's chest and gone through his body; that as a result of the wound the employee died almost instantly; that the claimant above named, failed to establish by evidence that the duties of the employee required the use of a gun or that in using the gun at the time the employee was in any way furthering his

master's interests, or that the injury resulting in death arose out of his employment.

'Upon the foregoing findings of fact, it is ordered by the Deputy Commissioner that the claim be and it is hereby Rejected for the following reason:

'That the claimant herein failed to establish by evidence that the injury and death of the employee above named arose out of his employment.'

"That on or about March 3, 1932, a bill of complaint was filed in the Supreme Court of the District of Columbia seeking to set aside the above order, rejecting the claim and denying compensation to the above claimant, the widow of Jeff Bowers on the ground 'That the claimant had failed to establish by evidence that the injury and death of the employee above named arose out of his employment;' that the bill of complaint alleged that the compensation order rejecting the claim 'is contrary to the undisputed testimony adduced at the said (compensation) hearing and is not according to law in that the facts established by the undisputed evidence conclusively show that said claim did come within the provisions of said Acts of Congress, and that the death of said Jeff Bowers did arise out of his employment within the contemplation of said Acts;' that a motion to dismiss the bill was filed by the United States Attorney in behalf of the Deputy Commissioner, and after hearing before Justice Adkins, the court overruled the motion to dismiss the bill, and subsequent thereto on July 21, 1932, a final decree and mandatory injunction was entered by the said court as follows:

[fol. 17] 'Final Decree and Mandatory Injunction

'This cause, coming on to be heard upon the defendant's motions to dismiss the bill of complaint, and having been argued by counsel and considered by the Court, it is, by the Court, this 21st day of July A. D. 1932,

'Adjudged, ordered and decreed that the motions filed by the defendants herein to dismiss the bill of complaint be, and the same are hereby overruled; and the defendants herein having in open court elected to stand upon their said motions and not to plead over, it is further

'Adjudged, ordered and decreed that the compensation order, rejection of claim, filed by R. J. Hoage, deputy com-

missioner, a defendant herein, filed February 15, 1932, complained of in the said bill, be, and the same is hereby set aside in whole as being not in accordance with law; and it is further

'Adjudged, ordered and decreed that the said defendant, R. J. Hoage, deputy commissioner, be, and he hereby is permanently enjoined from giving any effect whatever to the said compensation order filed February 15, 1932, and it is further

'Adjudged, ordered and decreed that the said defendant, R. J. Hoage, deputy commissioner, be, and he hereby is ordered and directed to file in the case before him entitled "Mrs. Bonnie L. Bowers, widow of Jeff Bowers, deceased, v. D. Del Vecchio, Trading as Peoples' Hardware Stores, employer, and Merchants Mutual Casualty Company, insurance carrier, case number 1960-6," a compensation order, with appropriate findings of fact, awarding compensation to Bonnie L. Bowers, widow of Jeff Bowers, the employee, who died as the result of injuries arising out of and in the course of his employment on September 10, 1931, and to Jefferson A. Bowers, child of the deceased employee, in accordance with section 9 of the Longshoremen's and Harbor Workers' Compensation Act (U. S. C. Title 33, Chapt. 18) as made applicable to the District of Columbia by Act of May 17, 1928, (D. C. Code, Title 19, Chapt. 2) and for reasonable funeral expenses and attorney's fees for services rendered before him, as provided by the statute; and it is further

'Adjudged, ordered, and decreed that there shall be paid to Chapin B. Bauman, attorney for the plaintiff the sum of two hundred and fifty dollars as attorney's fee for legal services rendered to the said plaintiff in the proceedings before this court, which sum shall constitute a lien upon and shall be paid out of any compensation awarded to the plaintiff as herein directed.'

In accordance with said final decree and mandatory injunction, the Deputy Commissioner on August 24, 1932, filed a compensation order awarding compensation to Mrs. Bonnie L. Bowers, surviving wife of the employee, and to [fol. 18] Jefferson A. Bowers, surviving minor child of the employee as follows:

'Award

'That the employer, D. Del Vecchio, t/a Peoples Hardware Stores, and the insurance carrier, Merchants Mutual Casualty Company, shall pay to Bonnie L. Bowers, claimant herein, compensation in her own behalf and in behalf of the surviving minor child of the employee from September 10, 1931, to and including August 17, 1932, a period of 49 weeks, at the rate of $14.80 per week, amounting to $725.20, which amount is due and shall be paid forthwith; and shall continue to pay compensation to the claimant herein in her own behalf and in behalf of the surviving minor child of the employee at the rate of $14.80 per week, payable every two weeks, until further order of the Deputy Commissioner; and shall pay to Bonnie L. Bowers the amount of $200.00 as reimbursement for moneys expended by her in the payment of burial expenses; and shall pay to Attorney Chapin B. Bauman for legal services rendered in behalf of the claimant before the Deputy Commissioner and before the Supreme Court of the District of Columbia the sum of $400.00, which amount shall constitute a lien upon and shall be paid out of the unpaid installments of compensation to which the claimant is entitled.'

"Subsequent thereto the insurance carrier herein, the Merchants Mutual Casualty Company, appealed from the action of the lower court to the Court of Appeals for the District of Columbia; that the case was submitted on briefs on October 5, 1933, and was decided by that court on November 13, 1933, as follows:

'Court of Appeals of the District of Columbia'

No. 5809

'D. Del Vecchio, trading as Peoples Hardware Stores, and Merchants Mutual Casualty Company, a Corporation, Appellants,

v.

Bonnie L. Bowers, Appellee'

'Appeal from the Supreme Court of the District of Columbia

'(Submitted October 5, 1933. Decided November 13, 1933)

'James E. McCabe, of Washington, D. C., for Appellants.

'Chapin B. Bauman, of Washington, D. C., for appellee.

[fol. 19] 'Before Martin, Chief Justice, and Robb, Hitz, and Groner, Associate Justices.

'PER CURIAM:

This is a compensation case. (Act May 17, 1928, 45 Stat. 600, secs. 1 and 2; title 19, secs. 11 and 12, D. C. Code 1929; title 33, U. S. C. A., secs. 901 et seq.)

'The employee was manager of a hardware store, numbered 1311 7th St., N. W., in the city of Washington. He died while on duty in the store as the result of a gun-shot wound from his own revolver. The deputy commissioner held that the claimant had "failed to establish by evidence that the duties of the employee required the use of a gun or that in using the gun at the time the employee was in any way furthering his master's interests, or that the injury resulting in death arose out of his employment."

'The lower court before which the case was brought by appropriate proceedings reversed the order of the deputy commissioner on the ground that the possession of the gun in the store, though unknown to the employer, was in furtherance of the employer's interests and that the evidence tended to show that death was accidental.

'In this state of the record, we have examined it carefully to determine if there is substantial evidence to support the findings of the deputy commissioner. We think there is not. The uncontradicted evidence shows that the store was located in a rough and dangerous neighborhood where drunkenness and fighting were habitual. Prior managers of the store had found it necessary to have a pistol on hand for protection. Deceased, it was shown, had followed this custom but had never had one at his other places of employment, There had been an attempted robbery of the store the night before the shooting, and at the very moment of the shooting the damage done on this occasion was being repaired by a carpenter at the direction of deceased. We cannot and should not shut our eyes to the well-known fact that larceny, house-breaking, and even murder have latterly tremendously increased in Washington. Without more, therefore, we think the evidence showed quite clearly that the possession of the pistol was reasonably necessary in the duty which deceased owed to

protect his employer's property and his own life. There was no evidence to the contrary, and the deputy commissioner's finding was therefore wholly unsupported.

'If this were all, we should be obliged to affirm the order of the trial court, but an inspection of the evidence shows that the case was tried before the deputy commissioner on the theory of suicide, but there was no finding one way or the other by the deputy commissioner on this important and, as we think, controlling issue in the case. The statute bars recovery in the case of suicide. (Act March 4, 1927, c. 509, sec. 3, 44 Stat. 1426; title 33, U. S. C. A., sec. 903.) The deputy commissioner should, as we think, have made a finding of fact on this question. He saw the witnesses and observed their demeanor and is better qualified than we are to pass on this question of fact. The act contemplates that he shall do so, and the regulation promulgated for his guidance directs him to. If we should decide the question for him, we would be passing on a controverted [fol. 20] question of fact as to which there is contradictory evidence in the record. This is clearly contrary to the intent of the act. In these circumstances we think the case should be returned to the deputy commissioner with instructions to find the facts as to the claim of suicide.

'Reversed in part, affirmed in part, and remanded with instructions to the lower court to set aside the decree entered in said court in so far as the same directs the deputy commissioner to make a compensation award and to remand the case to the deputy commissioner with instructions to proceed therein in accordance with the opinion of this court. Costs of this appeal to be paid by the appellants.

'Reversed in part.
'Affirmed in part.'

"That on December 20, 1933, the following decree was entered by the Supreme Court of the District of Columbia, signed by Mr. Justice Adkins, in which this case was remanded to Robert J. Hoage, Deputy Commissioner of the United States Employees' Compensation Commission, to find the facts as to the claim of suicide and to award compensation in accordance with the decree in the event that he finds that Jeff Bowers did not commit suicide:

'Decree'

'This cause coming on again to be heard, and it appearing that the mandate of the Court of Appeals of the District of Columbia on the 2nd day of December, 1933 was duly filed in this Court, it is now in conformity with said mandate, by the Court, this 20th day of December, 1933.

'Adjudged, ordered and decreed that the decree herein on the 21st day of July, 1932, enjoining and restraining Robert J. Hoage, Deputy Commissioner, United States Employees' Compensation Commission, D. Del Vecchio, trading as the Peoples Hardware Stores, Inc., and the Merchants Mutual Casualty Company from enforcing or attempting to enforce an order denying compensation to the said Bonnie L. Bowers on account of the death of her husband, Jeff Bowers, and ordering payments of compensation to the said Bonnie L. Bowers, is hereby vacated and set aside in so far as the same directs the Deputy Commissioner to make a compensation award, and the case is hereby remanded to Robert J. Hoage, Deputy Commissioner, Employees' Compensation Commission to find the facts as to the claim of suicide, and to award compensation, in accordance with the previous decree of this Court in the event that he finds that Jeff Bowers did not commit suicide.'

"After reviewing the testimony in the above-entitled case, it is now found by the Deputy Commissioner that the employee Jeff Bowers, who died on September 10, 1931, [fol. 21] came to his death by a gun shot wound of the chest by his own hand as a result of wilfull intent on his part to injure or kill himself, and that said injury and death therefore, while arising in the course of his employment did not arise out of the employment; that in accordance with Section 3 (b) of the Act no compensation is payable.

"Upon the foregoing findings of fact, it is ordered by the Deputy Commissioner that the claim for compensation be and the same here is Rejected for the following reason:

"That the employee's death was the result of his wilfull intent to injure or kill himself and that said injury and death did not arise out of his occupation.

"Given under my hand at Washington, D. C., this thirtieth day of January, 1934.

"Deputy Commissioner,
District of Columbia Compensation District.

"Proof of Service

"I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claim, the employer, the insurance carrier, the attorney for the claimant, and the attorney for the respondent, at the last known address of each as follows:

| "Name | "Address |
|---|---|
| Mrs. Bonnie L. Bowers, | 3203 Perry Street, Mt. Ranier, Md. |
| D. Del Vecchia t/a Peoples Hardware Stores, | 1434 Florida Ave., N. E., Washington, D. C. |
| Merchants Mutual Casualty Company, c/o Mutual Insurance Agency, | 1301 H Street, N. W., Washington, D. C. |
| Mr. Chapin B. Bauman, | 600 F Street, N. W., Washington, D. C. |
| Mr. James E. McCabe, | Transportation Bldg., Washington, D. C. |
| Mailed January 30, 1934. | Deputy Commissioner." |

With reference to the allegation in the bill that "the said Deputy Commissioner did not find the facts as to the claim of suicide in accordance with said decree of the Supreme Court of the District of Columbia, dated Decem- [fol. 22] ber 20, 1933," the court will note that this allegation is a mere conclusion of law of the plaintiff. It is not alleged in what respect the deputy commissioner erred in finding the facts as to the claim of suicide. A petition under section 21 (b) of the Compensation Act in force in the District of Columbia must be framed so as to state more than mere conclusions of law; Perry v. U. S. Employees' Compensation Commission, 27 Fed. (2d) 144; 1928 A. M. C. 1330 (D. C. Cal. 1928).

The decree entered by Mr. Justice Adkins on December 20, 1933, in Equity No. 54081 was in conformity with the mandate of the court of appeals entered December 2, 1933. This mandate was filed pursuant to the court's opinion of November 13, 1933, in which the latter court stated that "the case should be returned to the deputy commissioner with instructions to find the facts as to the claim of sui-

cide," citing the fact that the "Act of March 4, 1927, c. 509, sec. 3, 44 Stat. 1426, title 33, U. S. C. A., sec. 903" bars recovery in the case of suicide. The court further stated that "If we should decide the question for him (the deputy commissioner), we would be passing on a controverted question of fact as to which there is contradictory evidence in the record."

The only provision in the compensation Act which provides for the defense of a claim for compensation on the ground of suicide is contained in section 3 of the Longshoremen's Act, cited by the court of appeals in its opinion of November 13, 1933, and which reads as follows: "No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another" (Sec. 3 (b) ).

It will be noted from an examination of the compensation order complained of that the deputy commissioner's finding as to the claim of suicide is in the same language and strictly in accordance with the above quoted provision [fol. 23] of law, and in conformity with the decree of this court entered December 20, 1933, which provides that "the case is hereby remanded to Robert J. Hoage, Deputy Commissioner, * * * to find the facts as to the claim of suicide, and to award compensation, in accordance with the previous decree of this court in the event that he finds that Jeff Bowers did not commit suicide." Clearly, it could not be logically contended that the above quoted language of said decree precluded the deputy commissioner from making an affirmative finding of fact on the suicide question requiring the rejection of the claim, should he conclude, after a review of the testimony, that such a finding was warranted upon the basis of the evidence in the record, which was stated by the court of appeals to be "contradictory." The deputy commissioner, therefore, did not err in any procedural respect or otherwise in this case.

In view of the foregoing the defendant Hoage contends that the bill of complaint does not state a cause of action and should be dismissed.

Leslie C. Garnett, United States Attorney; John J. Wilson, Assistant United States Attorney, Attorneys for Defendant R. J. Hoage.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ADOPTION BY DEFENDANTS D. DEL VECCHIO TRADING AS PEOPLES HARDWARE STORES AND MERCHANTS MUTUAL CASUALTY CO. OF MOTION TO DISMISS AND MEMORANDUM OF POINTS AND AUTHORITIES FILED BY U. S. ATTORNEY ON BEHALF OF DEFENDANT HOAGE

Filed March 30, 1934

* * * * * * *

Now comes the defendants, D. Del Vecchio, trading as Peoples Hardware Stores and Merchants Mutual Casualty Company and with reference to the Bill of Complaint filed by the plaintiff in the above entitled cause, states that as [fol. 24] there has been a motion to dismiss, supported by memorandum of points and authorities, filed by the U. S. Attorney on behalf of the defendant Hoage, and which motion to dismiss defendants, D. Del Vecchio, trading as Peoples Hardware Stores and Merchants Mutual Casualty Company, are in accord, and as any motion to dismiss filed by said defendants would be practically a repetition of the motion to dismiss and the points and authorities already cited, said defendants, D. Del Vecchio trading as Peoples Hardware Stores and Merchants Mutual Casualty Company, hereby adopt the said motion to dismiss and the points and authorities submitted by the U. S. Attorney for the defendant, Hoage, as their motion to dismiss, supported by the same points and authorities.

Bramhall & McCabe, By: James E. McCabe, Attorneys for Defendants.

[fol. 25] Before United States Employees' Compensation Commission for the District of Columbia

Before Hon. R. J. Hoage, Deputy Commissioner for the District of Columbia

Case No. 1960-6

MRS. BONNIE L. BOWERS, Widow of Jeff Bowers, Deceased, Claimant,

vs.

D. DEL VECCHIO, Trading as People's Hardware Stores, Employer; Merchants' Mutual Casualty Company, Insurance Carrier

TRANSCRIPT OF TESTIMONY AT HEARING—Filed March 28, 1932

Pursuant to notice, this matter was heard before Honorable R. J. Hoage, Deputy Commissioner, United States Employees' Compensation Commission, at Washington, D. C., on the 22nd day of January, 1932, at 10 o'clock a. m.

Appearances:

Chapin Bauman, Esquire, Attorney for Claimant;
James E. McCabe, Esquire, Attorney for Respondent.

COLLOQUY

The Deputy Commissioner: This is the case of Mrs. Bonnie L. Bowers, claimant, widow of Jeff Bowers, deceased, against D. Del Vecchio, trading as People's Hardware [fol. 26] Stores, the employer, and the Merchants' Mutual Casualty Company, the insurance carrier.

Having been formally set for hearing, the case is presented for consideration at this time.

The parties present are:

Mrs. Bonnie L. Bowers; is she present?

Mr. Bauman: Yes, she is present.

The Deputy Commissioner: Is present in person and represented by Chapin Bauman, her attorney.

Mr. Bauman: That is right.

The Deputy Commissioner: And the witnesses on behalf of the claimant are: John Hoffman; Albert Dunn; Hiram Kermit Dunn; Samuel Del Vecchio; D. Del Vecchio, who is here with the records.

Are there any other witnesses, Mr. Bauman, on behalf of the claimant in this case?

Mr. Bauman: That is all our witnesses.

The Deputy Commissioner: Representing the respondent is Mr. James E. McCabe.

The witnesses on behalf of the respondent are: John B. Munroe; and, as I understand it, Lieutenant Fowler is out of the city.

Do you think his testimony is essential in the case?

Mr. McCabe: Yes, sir, I do.

The Deputy Commissioner: And Detective Sergeant Floyd A. Truscott. Is he here?

Mr. McCabe: No he is not here yet.

The Deputy Commissioner: And Detective Sergeant John C. Dalglish?

Mr. McCabe: No, he is not here.

The Deputy Commissioner: Dr. Edwin R. Donaldson?

Mr. McCabe: No he is not here.

The Deputy Commissioner: Just Mr. Hoffman?

Mr. McCabe: Yes. He is subpœnaed by the other side too.

The Deputy Commissioner: And Mrs. Thomas P. Mobley?

Mr. McCabe: She is not here yet.

The Deputy Commissioner: Is Dr. James A. Smart here?

Mr. McCabe: He is here.

The Deputy Commissioner: And Dr. Joseph D. Rogers, I understand, is away due to illness.

Mr. McCabe: Yes.

[fol. 27] The Deputy Commissioner: Have you any other witnesses?

Mr. McCabe: In addition to that I have E. W. Barnes and Val D. Austin.

The Deputy Commissioner: All right. Anyone else?

Mr. McCabe: Is Samuel Del Vecchio here?

Mr. Del Vecchio: Yes.

The Deputy Commissioner: Mr. McCabe, will you admit that the People's Hardware Stores, as an employer, were subject to the provisions of the District of Columbia Workmen's Compensation Act at the time of the alleged injury?

Mr. McCabe: Yes, sir.

The Deputy Commissioner: Will you admit that Mr. Jeff Bowers—is it Jefferson?

Mr. Bauman: No, just Jeff.

The Deputy Commissioner: Will you admit that Mr. Jeff Bowers, the deceased, was in the employ of the Peoples' Hardware Stores, on September 10, 1931?

Mr. McCabe: Yes.

Mr. Del Vecchio: Yes, he was.

The Deputy Commissioner: And he was rendering services for them on that date?

Mr. Del Vecchio: Yes.

The Deputy Commissioner: Is that right, Mr. McCabe?

Mr. McCabe: Yes, sir.

The Deputy Commissioner: Will you admit that the employer, the People's Hardware Stores, had knowledge of an injury sustained by Jeff Bowers on the 10th day of September, 1931, within thirty days of its alleged happening?

Mr. McCabe: Yes, sir.

The Deputy Commissioner: Now, gentlemen, can we agree on wages? It is $30 a week, plus the commissions?

Mr. Samuel Del Vecchio: I have the complete records of his exact wages, plus commissions.

The Deputy Commissioner: For one year preceding the date of his injury?

Mr. Del Vecchio: Yes.

The Deputy Commissioner: Can we have that filed by agreement and let it become part of the record?

Mr. Bauman: Yes.

Mr. Del Vecchio: I have the record here.

[fol. 28] The Deputy Commissioner: Will you give us the total amount for the year preceding the date of the injury and let the attorney for the claimant see it?

Mr. Del Vecchio: The total amount from September 10th, 1930 to September 9th, 1931, inclusive, was $1,783.86.

Mr. Bauman: $1,783.86?

Mr. Del Vecchio: Yes.

The Deputy Commissioner: How many days a week did he work?

Mr. Del Vecchio: Every day except Sundays.

The Deputy Commissioner: Six day a week?

Mr. Del Vecchio: Yes.

The Deputy Commissioner: Will we admit that as the annual earnings to the claimant, working six days a week?

Mr. Bauman: Yes, as far as the complainant is concerned.

Mr. McCabe: I will ask you, Mr. Del Vecchio: is that his salary plus his commissions?

Mr. Del Vecchio: Yes, his regular payroll and plus remunerative premiums that we have on certain merchandise and that we give.

The Deputy Commissioner: That is his total earnings for that year?

Mr. Del Vecchio: Yes.

Mr. McCabe: Were there any deductions at all from that?

Mr. Del Vecchio: No, no deductions at all.

The Deputy Commissioner: That is the net earnings? If he was sick what happened?

Mr. Del Vecchio: When he was sick, we paid him.

Mr. McCabe: That is admitted then.

The Deputy Commissioner: Mr. McCabe, will you admit that the burial expenses in the case amounted to $375, or that the expenses were in excess of $200?

Mr. McCabe: Yes.

The Deputy Commissioner: Have those expenses been paid by anyone?

Mrs. Bowers: Yes.

The Deputy Commissioner: Who paid them, you?

Mrs. Bowers: Yes.

Mr. Bauman: They were paid by the claimant.

The Deputy Commissioner: Then, if there is an award, it will be a reimbursement to the claimant in this case?

[fol. 29] Mr. Bauman: Yes.

The Deputy Commissioner: Will you admit that Mrs. Bonnie Bowers appears as the surviving wife of the deceased? I have the marriage certificate here.

Mr. McCabe: Yes, sir.

The Deputy Commissioner: You admit that?

Mr. McCabe: Yes. Let me see the marriage certificate.

(The marriage certificate was then examined by Mr. McCabe.)

The Deputy Commissioner: Yes; and will you also look at the borth certificate and see if you admit that Jefferson Albert is the surviving child of the deceased employee, born on February 19, 1930?

Mr. McCabe (after examining the records): Yes; I will admit as to the child. Here is the birth certificate.

The Deputy Commissioner: You admit that it is the surviving child of the deceased employee?

Mr. McCabe: Yes, sir.

The Deputy Commissioner: And that Mrs. Bowers is the surviving wife?

Mr. McCabe: Yes, sir.

The Deputy Commissioner: Will you admit that Jeff Bowers sustained an injury by a gun shot wound, from which he died, on the 10th day of September, 1931?

Mr. McCabe: Yes, sir.

The Deputy Commissioner: Now, what is your controversion, Mr. McCabe?

Mr. McCabe: The controversion——

Mr. Bauman (interposing): Mr. Commissioner, do you want these back now (indicating the marriage and birth certificates)?

The Deputy Commissioner: No; she can have those back.

Mr. Bauman: She would like very much to retain those.

The Deputy Commissioner: The record will show that the marriage and birth certificates were returned to the possession of the claimant at this time.

Mr. McCabe, the record shows that your denial is that the deceased sustained an injury arising out of and occur-ing in the course of his employment, within the meaning of the provisions of the District of Columbia Workmen's Compensation Act.

[fol. 30] Mr. McCabe: Yes, sir. And, also, that the deceased sustained no accidental injury or occupational disease under the provisions of the Compensation Act.

Mr. Bauman: Well, is not that the same thing?

The Deputy Commissioner: Yes, practically it is the same thing.

It will be necessary for you to prove that Jeff Bowers sustained an injury that occurred out of and in the course of his employment and resulted in his death.

That covers the point, does it, Mr. McCabe?

Mr. McCabe: Yes.

The Deputy Commissioner: I will swear in the witnesses at this time.

I will ask Mrs. Bowers, Mr. John Hoffman, Mr. Albert Dunn, Mr. Hiram Kermit Dunn, Samuel Del Vecchio, D. Del Vecchio, and Dr. Smart, to stand and be sworn at this time.

I think there are no other witnesses present?

Mr. McCabe: No I don't think so.

(Thereupon the claimant and the witnesses last above named were duly sworn by the Deputy Commissioner.)

The Deputy Commissioner: You will all remember, now, that you are under oath and please do not discuss this case among yourselves or with anyone during the pendancy of this hearing unless it be with your attorney.

Do you want the witnesses excluded?

Mr. McCabe: I think it a good idea of excluding them.

The Deputy Commissioner: Mrs. Bowers may remain, and Mr. Del Vecchio may also remain as the employer. The other witnesses will retire—Dr. Smart, I would like you to remain here and listen to the testimony.

Dr. Smart: I would like to get away as quickly as possible.

The Deputy Commissioner: Mr. Del Vecchio, the employer, may remain.

Mr. Bauman: I have no objection to both the employers being here.

The Deputy Commissioner: All right, both Mr. Samuel Del Vecchio and Mr. D. Del Vecchio may remain, and the claimant, and Dr. Smart.

[fol. 31] (Thereupon all witnesses save those last above indicated retired from the hearing room to await the call of the Deputy Commissioner.)

The Deputy Commissioner: I wish you would get Dr. Smart on the stand as soon as possible. The doctors are all busy men and we like to accom-odate them as much as we can.

Mr. Bauman: I have no objection to him going on first, as far as I am concerned.

I do not know what he will testify to.

The Deputy Commissioner: It is a little out of order, but, by agreement, we will allow him to go on.

It is neccessary for the claimant to establish a prima facie case before there is anything to rebut, but if Mr. McCabe wants to he may put him on now.

Mr. McCabe: Was he also subpœnaed by the claimant?

Mr. Bauman: No; I do not know Dr. Smart.

Mr. McCabe: I do not know him either.

I would like to put him on the stand now, though; we know he is a busy man.

The Deputy Commissioner: I think the medical question involved is merely establishing the death, the cause of death and, by agreement, we will take the testimony of the doctor at this time.

Mr. Bauman: That is agreeable with me.

Mr. McCabe: I am satisfied with that.

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Thereupon Dr. James A. Smart was called as a witness for and on behalf of the respondent and, having been previously duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified as follows:

Examination in chief.

By the Deputy Commissioner:

Q. Dr. Smart, please state your full name for the record?

A. James A. Smart.

Q. And your address, doctor?

A. 1026 15th Street, Northwest; the Cecil Apartment.

Q. Doctor, what school are you a graduate of and in what year did you graduate?

A. George Washington University Medical School, 1919.

[fol. 32] Q. You are a registered physician in the District of Columbia?

A. Yes.

Q. What particular line of medicine or surgery do you follow?

A. I specialize in the diseases of the ear, nose and throat.

Q. You specialize in that?

A. Yes.

The Deputy Commissioner: Are there any further questions to ask the Doctor?

As I understand it, Dr. Smart was the attending physician in this case?

Mr. Bauman: Was he?

Mr. McCabe: He had treated Mr. Bowers.

The Deputy Commissioner: Then he was one of the attending physicians.

He is testifying as the attending physician?

Mr. McCabe: Yes; as one who had attended Mr. Bowers prior to his death.

The Deputy Commissioner: You may proceed, Mr. McCabe.

Direct examination.

By Mr. McCabe:

Q. When did you first see Mr. Jeff Bowers, the deceased in this case?

A. Mr. Bowers consulted me on August 24, 1931. That was the first time I had ever seen him.

Q. What did he consult you about?

A. He consulted me in regard to his left ear.

Q. Did you obtain from him a history of his left ear?

A. Yes; the history he gave me was that:

On November, in 1928, the exact date I do not know, but November, 1928, he had an operation on his left mastoid at George Washington University Hospital and that since that time he had had a discharge from his left ear, nearly continuous discharge, since 1928.

Q. Had he told you whether or not this operation was successful?

A. Well, he did not say, but that during the last two months, that is preceding the time he consulted me, he had had considerable pain in his left ear and that he had practically no hearing in his left ear.

That is the history he gave me.

[fol. 33] Q. Now, Doctor, would it help you any if I called your attention to your testimony given before the Coroner's Jury on page 63 of the Transcript of Testimony taken at the Inquest, in which you said that this operation, talking about the operation at the George Washington Hospital: "This operation, he said, was not a success, and his ear was worrying him considerably because it did not seem to be getting any better. He had seen no doctor since his ear was operated on, because the doctor, as I understand, had operated on him and is not now in the city. At any rate, he came to consult me, to ask my advice about what he could do about this chronic discharge from his left ear, and also from the fact that for the last two or three weeks his ear caused him considerable pain." What I am asking

you particularly is that you testified that "this operation, he said, was not a success."

A. I do not recollect that, no.

Q. You do not recollect that?

A. No, but from the look of the thing, and his history, it is my opinion that the operation was not a success.

Q. In other words, if the operation had been a success or if an operation of that kind is successful, you won't have this pus?

A. No, this chronic discharge would not be there, or this pain.

Q. What did he consult you about, Doctor?

A. He consulted me solely in regard to the pain in his ear.

Q. Did he describe that pain?

A. He said that it bothered him worse at night; that he could not sleep much.

I asked him how long the pain persisted and he said sometimes he was free from pain a week or so, but that about two months preceding the date when he first saw me he had been having the pain and it seemed to be getting worse.

Q. Did you make an examination of him, Doctor?

A. Yes, I made an examination of the ear.

Q. What did that examination disclose?

A. The examination showed a healed wound in the back of his left ear which I took to be the scar of a healed former mastoid operation; the wound was healed and there was no discharge from the wound.

In the canal, this portion of his ear (indicating), there was some pus which had a very foul odor.

[fol. 34] The drum of his ear, his left ear, was completely gone.

There was some granulation tissue or scar tissue present in the middle ear.

The middle ear we could see but the ear drum was not present.

These granulations present indicated that he had had and did have a severe infection present in his middle ear at that time.

He spoke in a voice very loud. He could hear two feet from the ear no whispered voice or sound; he could not hear at all in that ear.

That is the extent of the examination.

Q. Now, from the history given of this case to you by this man, Doctor, in your experience in similar cases—I imagine you have had hundreds of them, have you not—are those conditions, do they cause a painful situation as results or regards the man's nervous condition?

A. Very often they do but, also, quite often, there is no pain present at all; just the discharge.

Q. This man complained of pain to you?

A. He told me of pain that he had, of course. As you know, we cannot see pain.

Q. Where is that pain generally reflected, in your past experience?

A. That pain may be localized deep in the ear, or extend to the whole side of the head, or the whole head, or it may be centered in back of the head.

Q. Did he give you a history of having headaches?

A. I suppose he took this pain to be a headache. I took it to be a pain. The fact that he had been more or less free from it up until two or three months before he saw me, when this discharge was present, I took it to be that this infection in the middle ear was the cause of his pain.

Q. Now, after you made this examination, Doctor, what did you advise him to do?

A. After I made the examination—I might state that at the time I made the examination, that Mr. Bowers did not appear particularly alarmed about his ear; he just said he did not like *to*, he did not like it because he was having more pain in the last two months; he wanted to see what could be done about it.

He saw me in my private office.

I am on the staff of the Episcopal Eye, Ear, Nose and Throat Hospital.

[fol. 35] I talked to him about the treatments he should take and also about finances; I am usually very frank with my patients about that, and he said to me that he could not afford to pay for treatment two or three times a week; also that he was not certain that he could get away from his place of work *to* the hours at which I would like to see him at the office.

In view of the fact that I did not think he would be able to pay—and, as I say, I am always frank with my patients about that—he said he did not think he could afford that,

I told him—I think I said that I was on the staff of the Episcopal Hospital which was just a block away from my office, and I said to him: "If you will go up there I will see you get an examination and as much treatment as is necessary without it costing you an awful price. They have a clinic there for people who are not able to pay the full fee to the physicians" and, as far as my records show, and that is correct, I only saw Mr. Bowers the first time, one time in my office, but several times in the hospital.

Q. Did you suggest to him that it might be necessary to have an operation on this ear?

A. I told him that very often in those cases if after a certain amount of treatment the discharge persisted, it may be necessary, sometimes, to have another operation; I did not tell him definitely that there was another operation in prospect. I did states that there might be one.

Q. Did you explain to him what kind of an operation might be necessary?

A. I told him the same operation would be necessary, a mastoid operation.

Q. He had one previous?

A. Yes, he had had one previous.

Q. How was that operation performed, Doctor?

A. You mean the first one he had?

Q. Yes, and the second, how would that be performed?

A. The first one he had—I did not do that operation, but I have a record here from the George Washington Hospital if you want it in regard to the operation he had in 1928.

Q. I would like to have that.

A. There is not very much to it. We called the hospital and they simply—this is from the George Washington University Hospital, it is from their record system.

Mr. Bauman: Just a minute, Doctor.

[fol. 36] Mr. Commissioner, I know you are more or less informal in this kind of a hearing; I understand so. I do not often get up here but I want to make this objection at this time:

There is no issue that I know of here upon which this testimony is pertinent or relevant.

The Deputy Commissioner: I understand that, Mr. Bauman, but we are doing this out of order and I do not know what the attorney may have in his mind.

Mr. Bauman: I understand. I am going to just say that if the Commissioner will allow it in I do not want to waive any right I may have to object to it later or to move to strike it out later on.

The Deputy Commissioner: If you feel you want that supported by the original record, I will be glad to subpœna the original record.

Mr. McCabe: I am merely trying to shorten it.

Mr. Bauman: I understand that there is no issue under which this would have any bearing on the case.

The Deputy Commissioner: We are allowing him to go on, as I said, out of turn so that he might be accomm-odated as to his time.

Dr. Smart's testimony we are allowing at this time because of the understanding that we had in the beginning.

Mr. Bauman: I also mean that there is no issue under the informal sort of pleading here.

The Deputy Commissioner: They are denying the injury he sustained arose out of and occurred in the course of his employment, and there is some question of suicidal death.

Mr. Bauman: If that is the issue, it should have been brought forward here. We are not prepared to rebut that. If we are given additional time to bring forth other witnesses than those who are here this morning, I have no objection to him going into that question.

The Deputy Commissioner: I thought that you would understand, the rebuttal going on first out of order by agreement of both parties of interest, that that was the reason for Dr. Smart's testimony at this time.

That is why I am allowing this to go in and giving perfect freedom to the other side.

It will be weighed for what it is worth and you will be given every opporunity to make out your case.

[fol. 37] By Mr. McCabe:

Q. Will you proceed, Doctor, please?

A. This record as I say is from the George Washington University Hospital, and shows that the operation was performed on Jeff Bowers on November 11, 1928, by Dr. Bland; he is not in the city now. The mastoid operation was performed and the ear cells were curetted and a system of drainage established through the canal.

Q. Now, when the doctor says that that was curetted and uses that description, will you describe it for the record?

A. In non-technical language?

Q. Yes?

A. It is right here (indicating). He describes the ordinary mastoid operation. As I say, I do not know what went on previous in regard to Mr. Bowers but he described simply the ordinary mastoid operation which is an incision back of the ear, over these mastoid cells and when these are straight they leave the cavities and the bone back of the ear; they connect with the middle ear. If an infection comes the pus is there.

The symptoms may be such that an operation is necessary and in that operation an incision is made over these cells that are in the bone and they are curetted, all those cells are scraped out, and that leaves a connection between those cells and the outside, between the mastoid or cells, and inside of the ear, so that a drainage is established through the internal and external canals in back through the ear here (indicating).

Q. Do you ever have these mastoid operations result fatally or set up a serious condition?

A. Sometimes a mastoid operation will result fatally.

Sometimes, following a mastoid operation, the infection still persists due to sometimes not getting all the ear cells curetted and sometimes -ven though all the ear cells are curetted infection still exists.

Q. So, in this case, after the operation, this man still had an infection?

A. After the operation this man had an infection in the middle ear, with the discharge of pus through the external ear.

The wound back of the ear was perfectly healed.

Q. It was?

A. Yes.

Q. Was there any connection between the previous operation and this condition?

A. I do not understand that.

[fol. 38] Q. Was there any connection, in your mind, between the previous operation and the existing condition you found when you examined Mr. Bowers?

A. I cannot say whether there was any connection, but very often following what we call a simple mastoid opera-

tion, such as I have described, there is infection that still persists, even though the patient is not in any critical condition, and we can only judge that from the discharge which is one symptom of the presence of infection.

Q. If the first operation is successful, would you have such infection as you found?

A. No.

Q. So, therefore, this operation was not successful?

A. I would say it was not successful because sometimes it persists for a few months, but where it persists for several years we consider that a non-successful operation.

The Deputy Commissioner: You are trying to find out if an eventful recovery was made or if it has been uneventful.

Mr. McCabe: Yes.

The Deputy Commissioner: Is there testimony that there had not been a complete recovery?

The Witness: There had not been a complete recovery as far as I am concerned.

By Mr. McCabe:

Q. Now, you are a physician attached to the Episcopal Ear, Eye, Throat and Nose Hospital?

A. Yes, sir.

Q. Did you bring those records, too?

A. Here are the two records of the hospital (indicating certain papers).

Q. What do those records show in regard to the treatment that Jeff Bowers received, Doctor?

A. Mr. Bowers saw me in my office on August the 24th, 1931.

Mr. Bowers went to the hospital August 27, 1931, three days later.

Of course, on this card, when a patient is admitted, he is given a card on which a slight history of his previous condition, diagnosis, treatment, and any remarks are placed. This shows that.

By the Deputy Commissioner:

Q. You saw him there, did you, Doctor?

A. Yes.

Q. And you sent him there?

A. I sent him up there; in fact, he has on this card here: [fol. 39] "To see Dr. Smart" and it gives my day; I give a day for the free clinic and give a couple of hours' work twice a week but I do not get paid for it. I do not have to do it but I do it.

Here are the only two records we have (exhibiting the documents).

Q. Those are the records of the hospital?

A. Yes.

The Deputy Commissioner: Do you want me to read that into the record?

Mr. McCabe: Yes.

The Deputy Commissioner: Do you want to see it before it goes in the record?

Mr. Bauman: Yes; I would like to.

The Witness: Here is another one, an x-ray report of his ear (exhibiting another document).

I do not know whose writing is on the card. There are several clerks and resident physicians.

By the Deputy Commissioner:

Q. Have you read the card?

A. Yes.

Q. Do you recognize that as a report you made on the case, and as a report of your findings?

A. I did not make a report on that card there, no.

The only report that I wrote myself is this one (indicating); the one I have in my office.

Mr. Bauman: Well, we have the Doctor's first-hand direct examination of the patient, and I think that would be the better information; we do not know where that came from and anyway it practically follows the same lines.

The Deputy Commissioner: There is no objection to having it copied in the record, just merely as the record of the hospital?

Mr. Bauman: No.

The Deputy Commissioner: I think the Doctor testified as to what days he was treated in the hospital?

The Witness: No, I did not.

Mr. Bauman: He said that he went there on the 27th.

The Witness: On the back of the card is the record of the days that he reported there.

When a patient comes in, they get their card out of the file and they stamp the date on the back; sometimes there may not be any note written there.

[fol. 40] Mr. McCabe: All I would like to do is to save time and I would like to have only the dates that he went to the Episcopal Eye, Ear and Throat Hospital.

The Deputy Commissioner: The date of the treatment.

Q. Doctor, tell us what the record shows as to the treatment rendered at the hospital?

A. Well, the old question with Mr. Bowers——

Q. (Interposing.) I mean the dates.

A. The first one, August 27, 1931, was for examination.

Q. And what date does that show he was treated there, Doctor? What was the next time?

A. August 28th, was the next date, and August 29th; that is the last time that is in the record.

Q. That is three treatments in the hospital?

Is there anything else that you want to put in the record?

Mr. McCabe: No, sir.

The Witness: That x-ray report that I have here——

The Deputy Commissioner (interposing): Have the Doctor read it if you want.

The Witness: This x-ray was ordered on the 27th of August, 1931, the day that he evidently first went to the hospital.

Do you want me to read the report?

The Deputy Commissioner: Just what it shows.

The Witness: Examination of the mastoid left shows marked sclerosis and obliteration of the cell structures on the left side. I cannot make out any operative defect. It has probably filled in with dense bone. The right mastoid is normal.

That is signed by Dr. Thomas A. Groover.

The Deputy Commissioner: That is all.

Cross-examination.

By Mr. Bauman:

Q. Do you know what he meant by "Cannot make out any operative defect"?

A. That means in the bone itself.

Q. That refers to the previous operation?

A. Yes, to the previous operation. That is he did not find the scar on the section of the bone itself; he could not see an effect of any previous operation.

[fol. 41] Q. He could not see any effect?

A. He says: "I cannot make out any operative defect"; he means he could not see any cavity due to any previous operation. It has probably filled in with dense bone. That probably occurred after this operation. These cells fill in with bone and, if you take an x-ray, you cannot tell that there had been an operation unless you see the scar itself.

The right mastoid, he says, is normal.

Q. I notice in that report it says: "Pain in ear two weeks". I understood you to say two months.

A. Two months.

Q. Whose writing is that?

A. I do not know whose writing it is; probably one of the clerks. They have to put something on these reports because the x-ray man does not see the patient at all. They have a technician at the hospital who takes the picture and they usually write the history on the sheet so that the x-ray man who sees the plate can look at it and, when they come to this one, for instance, they say: "Left ear paining last two weeks."

Q. That information is usually obtained from the patient?

A. From the patient, yes.

All I know is that he told me it was a couple of months he had had the pain bothering him.

Q. I understood you to say that Mr. Bowers did not seem particularly alarmed about the condition of the ear?

A. That is correct.

Q. The days that he attended the hospital, do you know the nature of the treatment he received?

A. I do not know the nature of the treatment he received because I was not there.

Q. Do you know whether or not he was discharged by the hospital on the 29th?

A. Well, I know positively he was not discharged from there; I just know that after the 29th he did not show up any more.

Q. How do you know, Doctor, that he was not?

A. I sent him to the hospital, to the resident surgeon of the hospital, Dr. Snow, who also testified at the Coroner's inquest over his condition. He has since left town and is in Houston, Texas, and I remember telling him to take a personal interest in this man and I know that Dr. Snow told me he did not come in or that he had not seen him for some days, or that Bowers had not appeared lately.

[fol. 42] Q. It was possible, was it not, for this condition to respond to treatment?

A. It was possible, yes; that is why we were going to try to——

Q. (Interposing.) And you say that Mr. Bowers did not come in any more and you saw him no more, I believe?

A. Yes.

Q. You did see him at the hospital?

A. I saw him at the hospital but I could not say the dates I saw him.

Q. You did not treat him any more?

A. I did not treat him any more.

Q. You don't know whether this condition was cleared up or not?

A. I cannot say whether the condition positively was cleared up or not.

Mr. Bauman: That is all.

Redirect examination.

By Mr. McCabe:

Q. Doctor, from your experience how long treatment would it take to be successful in a case of this kind?

A. I have seen cases in which constant treatment would bring about a clearing up of the discharge, but I have seen them take treatment as long as a couple of years.

Q. And how long constant treatment in a case of this kind would it be before it was cleared up?

A. You mean of Mr. Bowers?

Q. Yes?

A. I cannot say whether he would ever clear up.

Q. In your opinion, Doctor, do you believe it could be cleared up by treatment or was that possible?

A. I did not see enough of Mr. Bowers to be able to express an opinion as to whether he would be able to clear up or have that condition cleared up under treatment. I

would — to at least observe a man a month for a condition of that kind in order to even judge whether it could be cleared up without an operation. So, I cannot say in his case.

Q. What does this treatment consist of, Doctor?

A. The treatments consisted of trying to find out what type of germ is causing the infection of the middle ear; that is bacteriology and a study of that, and the administration of antiseptics in the ear, sometimes the removal of a little [fol. 43] granulation of granulated tissues the result of the inflammation obstructing the middle ear; sometimes cauterizing or cauterization of the middle ear, and of administration of antiseptics powder in the ear; and, again, it is sometimes the treatment of the nose and the administration of tonic and vaccine.

Q. Is the vaccine made up——

A. (Interposing.) It could be made up. If the germ can be isolated that can be given to the patient.

Q. That is shot into the blood stream?

A. No, not shot into the blood stream, but beneath the skin by hypodermic.

Q. By hypodermic injection?

A. Yes.

Mr. McCabe: That it all.

Mr. Bauman: That is all.

Examination in chief (resumed).

By the Deputy Commissioner:

Q. Doctor, you found, the condition you found this man suffering from, was that particularly aggrav-ted to him, to a nervous condition?

A. I cannot say about that, whether it was or not. We only tell from the actions and appearance of the patient.

Q. Well, in your opinion, was it a source of considerable aggravation to him, his loss of sleep and irritation of the ear?

A. It could very well be the source of great worry to him.

Q. He complained of symptoms, of severe headaches?

A. Yes.

Q. You said you thought that that was pain in the ear?

A. Yes.

Q. Would that indicate, as far as aggravation of his nervous and mental condition is concerned, that—what would that indicate? Would it cause an aggravation?

A. It could, yes.

Q. In your opinion, was this severe enough to cause it?

A. It could be, yes. It could very well be sufficient to cause him to have constant pain, sleeplessness and nervousness.

The Deputy Commissioner: All right. Are there any other questions?

Mr. Bauman: No.

Mr. McCabe: I have none.

[fol. 44] (The witness thereupon was excused and retired from the witness stand.)

The Deputy Commissioner: All right, Mr. Bauman, you may proceed with your witnesses to set up your case.

Mr. Bauman: I guess I will call Mrs. Bowers.

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Thereupon Mrs. Bonnie L. Bowers, the claimant herein, was called as a witness for and in her own behalf and, having been previously duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified as follows:

Examination in chief.

By the Deputy Commissioner:

Q. You are Mrs. Bonnie Bowers?

A. Yes, sir.

Q. And you are the claimant in this case?

A. Yes, sir.

Q. What is your address?

A. 3203 Perry Street, Mt. Rainier, Maryland.

The Deputy Commissioner: All right, Mr. Bauman.

Direct examination.

By Mr. Bauman:

Q. Of course you are the widow of Jeff Bowers?

A. Yes.

Q. In whose employ was your husband?

The Deputy Commissioner: Well, that has been admitted.

Mr. Bauman: That is all admitted. I will try to direct Mrs. Bowers' testimony now——

The Deputy Commissioner (interposing): To the particular occasion.

The question to be determined is whether the injury arose out of and occurred in the course of his employment. That is the question before us.

By Mr. Bauman:

Q. Mrs. Bowers, did you ever visit the place of employment of your husband?

A. Well——

Q. (Interposing.) Where was he employed at the time of his death?

A. 1311 7th Street, Northwest.

[fol. 45] Q. How long had he been employed there?

A. At this one place?

Q. Yes?

A. I think it had been around two years, had he not, Mr. Sam?

The Deputy Commissioner: No; you will just have to answer yourself.

By Mr. Bauman:

Q. Well, do you know how long it was? Mr. Del Vecchio can testify later on.

The Deputy Commissioner: Yes; I want her to testify now.

The Witness: I do not know the date that he went there.

By Mr. Bauman:

Q. About two years?

A. Yes.

Mr. Bauman: That is sufficient?

Mr. McCabe: Yes.

By Mr. Bauman:

Q. What was the number of this store?

A. The number?

Q. The street and number?

A. It was 1311 7th Street.

Q. You say that you had visited that store on how many occasions?

A. I have been down there about a dozen times; on Saturday he worked late on Saturday night, and I used to go down and stay with him on Saturday night.

Q. The store was open on Saturday night?

A. Until ten o'clock it was open on Saturday night.

Q. What kind of a neighborhood is this, Mrs. Bowers?

A. Very rough.

Q. In reference to whether it is a white or a colored neighborhood, what kind of a neighborhood is it?

A. It is colored and white, but there are——

Q. (Interposing.) Which predominates?

A. Mostly colored.

Q. Do you know whether or not your husband kept a revolver at the store?

A. Yes, I knew he kept it.

Q. Do you know how long he had been keeping a revolver at the store?

A. He took it there when he went to work at the store.

[fol. 46] Q. On Seventh Street?

A. Yes.

Q. Do you know whether he had one before that? Did Vecchio?

A. Yes.

Q. What store was that?

A. Eighteenth Street and Columbia Road; I do not know the number.

Q. Do you know whether he also had a gun at that store or not?

A. No, he did not.

Q. How soon after he went to work up on the Seventh Street store did you know that he obtained this revolver?

A. He took it there when he went to work there.

Q. And where did he keep it at the place of business, or did he bring it back to his home with him?

A. No, he kept it there.

Q. He kept it there?

A. Yes.

Q. You, of course, were not present at the time your husband died?

A. No.

Q. After he sustained this gun shot wound, you were not able to talk to him, were you?

A. No; he died before I got to the hospital.

Mr. Bauman: I think that is all.

Mr. McCabe: That is all.

Examination in chief (resumed).

By the Deputy Commissioner:

Q. What was his state of health, preceding this date of his injury?

A. The state of his health?

Q. Yes?

A. Good; he never lost any time being out of work.

Mr. Bauman: Mr. Commissioner, I did not go into that because I think it is properly a case for rebuttal. The law is that—in fact, as I say, there is no issue in this case of suicide. The law is that the presumption is against suicide. It is an affirmative defense and has to be proven by the Respondent.

If you want me to go into that, I can develop all of that on my direct case but I purposely avoided that because I think it is incompetent. That is, I think it is incompetent for me to put it on in direct. It is incumbent on the Respondent here to prove that this death was of suicide nature if that is their claim.

[fol. 47] The Deputy Commissioner: Of course, the Deputy Commissioner is not bound by the common or statutory rules of evidence, and he can make any investigation that he desires.

Mr. Bauman: I am not objecting; I am stating why I have not gone into that point.

If you desire that, I can produce my whole case in reference to that in chief.

The Deputy Commissioner: I am not making a request for any kind of information; I am leaving that entirely to you to take care of your own case.

I want that question answered, what was his health, the condition of his health?

By the Deputy Commissioner:

Q. Will you answer that question?

A. It was good; he had not been out of work since he was operated on for his mastoids.

Q. Did he eat his breakfast as usual that morning?
A. Yes.
Q. Had he been complaining about anything?
A. No.

The Deputy Commissioner: That is all.
Mr. McCabe: In view of that, there are one or two questions that I would like to ask.

Cross-examination.

By Mr. McCabe:

Q. In answer to the question of the Commissioner, had he been complaining about anything, let me ask you this: What was his financial condition at about the time of his death?
A. We did not have anything like that and we did not have any debts that we could not pay; we had enough to cover any expense.
Q. What I am asking about, Mrs. Bowers, is: Do you know about the amount of debts he owed at the time he died?
A. He did not owe any debts but the car, and Doctor—there was twenty dollars on my doctor's bill.
Q. What doctor's bill was that?
A. Doctor King.
Q. He owed Doctor King twenty dollars?
A. Yes.
Q. And on the car, how much did he owe?
A. $140.00.
[fol. 48] Q. Was that payable—how was that payable, do you recall?
A. By the month; monthly payments.
Q. Do you know how much?
A. About thirty-six dollars, exactly.
Q. Thirty-six dollars a month?
A. Yes, sir.
Q. Did you rent your home?
A. Yes, we rented our home.
Q. How much did you pay for that?
A. Twenty-five dollars.
Q. Was your rent paid to date?
A. Yes.
Q. Do you work, Mrs. Bowers?

A. No, not since the baby came.

Q. You are positive, though, that the only two debts he had at the time of his death were the Doctor, amounting to twenty dollars and the automobile?

A. I am positive that it was that; only the Doctor and the automobile.

Mr. McCabe: That is all.

Mr. Bauman: That is all, Mrs. Bowers.

The Deputy Commissioner: You may be excused.

Mr. Bauman: If the Commissioner desires, I can go into that other matter.

The Deputy Commissioner: I am not desirous of anything. I am here to pass on the case and not to direct the setting up of the case.

Mr. Bauman: I mean, if the procedure here is as informal as that, I could do it; as I say, the presumption of the law is against suicide.

The Deputy Commissioner: The presumption will be used in deciding the evidence. It is up to you to establish what evidence you want to put on to support the case.

Mr. Bauman: I take the position that the presumption puts the burden on the Respondent to prove the suicide.

The Deputy Commissioner: The presumptions of the law, as has been stated by this office, covers probably ninety-five to ninety-eight per cent of all cases which are settled without a hearing; when we come to a hearing it has been generally believed that you are establishing a record which comes before the Court, and in that record you must establish a prima facie case and that is what we are doing in this hearing.

Mr. Bauman: Yes.

[fol. 49] The Deputy Commissioner: In the hearing, there must be a prima facie case established of an injury arising out of and occurring in the course of employment.

Mr. McCabe: And, also, in view of the Bradley decision that went to the Court of Appeals, that question came up in reference to the presumptions, and the Court held in that case that there was not sufficient evidence to sustain the presumption.

The Deputy Commissioner: Yes, that is a Court of Appeals decision that there must be a prima facie case in the record itself.

Mr. McCabe: To sustain the presumption.

Mr. Bauman: That is true, and that the occasion of the injury during working hours and under circumstances which tend to prove that it arose out of the employment is a prima facie case.

The Deputy Commissioner: That is an interpretation; I will have to see what the facts are.

(The witness thereupon was excused and retired from the witness stand.)

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Thereupon Benjamin Albert Dunn was called as a witness for and on behalf of the Claimant, and having been previously duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified as follows:

Direct examination.

By Mr. Bauman:

Q. Please state your full name.

A. Benjamin Albert Dunn.

Q. And your address.

A. 3203 Perry Street, Mt. Rainier, Maryland.

Q. What relation, if any, are you to Mr. Jeff Bowers—First, what relation are you to Mrs. Bonnie L. Bowers?

A. She is my sister.

Q. You knew Mr. Jeff Bowers during his life time?

A. Yes, sir.

Q. Are you now in the employ of Mr. Del Vecchio?

A. Yes, sir.

[fol. 50] Q. About how long have you been in the employ of Mr. Del Vecchio?

A. About six years, I believe.

Q. What store are you working at now, Mr. Dunn?

A. I am working at 2101 Rhode Island Avenue, Northeast, No. 9 store.

Q. Previous to going to work there, at what store did you work?

A. I worked at Mt. Rainier, Maryland, previous to that.

Q. Did you ever work at 13—whatever it is.

Mr. McCabe: 1311?

By Mr. Bauman:

Q. Yes, 1311 Seventh Street?
A. Yes, sir.
Q. When did you work there, Mr. Dunn?
A. 1929; that is correct—yes, 1929.
Q. And how long did you work there, approximately?
A. About eight months.
Q. About eight months?
A. Yes; eight or ten months; I do not know exactly. I have not any record. It was about that.
Q. Mr. Dunn, what is the location or what is the character of the neighborhood in that location there, at 1311 Seventh Street?
A. Very undesirable; in fact, I would consider it dangerous.

Mr. McCabe: What was that answer?
The Reporter (reading): "A. Very undesirable; in fact I would consider it dangerous."

By Mr. Bauman:

Q. What do you mean by that, Mr. Dunn?
A. There is always a bunch of drunk niggers coming in the store, and all up and down the street too, and there is fights all around there in that section, quite frequently.

Mr. McCabe: I object to that answer unless he knows of his own information that this is so.
Mr. Bauman: He worked there eight months.
Mr. McCabe: But he says "always".

By the Deputy Commissioner:

Q. Have you seen differences out on the street, disputes and quarrels?
A. Yes.
[fol. 51] Q. You saw that with your own eyes?
A. Yes.
Q. And that is not from hearsay?
A. No, sir; I know that with my own eyes.

By Mr. Bauman:

Q. Mr. Dunn, during the time that you worked at that store, was there any attempted robbery or burglary at that store?

A. No, sir.

Q. Were there in the neighborhood while you were working there?

A. I cannot recall; no.

Q. Mr. Dunn, did you have a pistol, or a revolver at the store during the time that you worked there?

A. Yes, sir.

Q. You did keep one?

A. Yes; sir.

Q. Constantly?

A. I had one there all the time I was there.

Q. How did you know Mr. Bowers—quite intimately?

A. Yes, sir.

Q. Did you ever work at the same store with him?

A. Yes, sir.

Q. You did work at the same store with him?

A. Yes.

Q. What store was that?

A. No. 2 store, at Cottage City, Maryland.

Q. That was previous to Mr. Bowers' working at the Seventh Street store?

A. Yes, sir.

Q. Did you know Mr. Bowers intimately right up to the time of his death?

A. Yes, sir.

Q. Did you see him frequently?

A. Yes, sir.

Q. What was his general disposition, Mr. Dunn?

A. Well, very cheerful, I would call it.

Q. Did you ever visit Mrs. Bowers, your sister, and Mr. Bowers at their home?

A. Quite often, yes, sir.

Q. Are you married, Mr. Dunn?

A. Yes, sir.

Q. Were you married—how long have you been married?

A. I have been married nearly thirteen years.

Q. Did you and your wife ever visit them at their home?

A. Yes, sir.

Q. Right up to the time of his death?

A. Yes, sir.

Q. What was the condition of Mr. Bowers' domestic relations, if you can say—was he on—did he have any trouble with your sister?

A. Not that I know of, sir.

[fol. 52] Q. When you visited them, how did they seem?

A. They seemed both jolly.

Q. Loving and affectionate to each other?

A. As well so as any family I know of, sir?

Q. Did they ever have any serious trouble that you know of?

A. None that I know of, no, sir.

Q. What was Mr. Bowers' general disposition?

A. Well, he was a very jolly fellow and when I—we would go out on trips, and so forth together, and he was always the life of the party anywhere we were.

Q. Did that continue up to the time of his death, or did you notice any change in his attitude?

A. I did not notice any change of his attitude whatever, sir.

Q. Did you personally know anything about Mr. Bowers' financial condition?

A. Yes, sir, I did.

Q. What did you know about that?

A. Well——

Mr. McCabe (interposing): I object unless he absolutely knows. If this is hearsay I object.

The Deputy Commissioner: I want to hear what he says, Mr. McCabe.

The Witness: I know that he had money in the bank at his death, and I know that he owed a little bit on his automobile, some money on his automobile; I cannot give you the exact figures on that, but he had more money in the bank than would take to cover any of his indebtedness. I know the exact amount he had in the bank. I know it was several hundred dollars.

Q. You say you know the exact amount——

A. (Interposing.) I mean I do not know the exact amount; but I do know it was several hundred dollars.

By Mr. Bauman:

Q. Mr. Dunn, do you know anything about an attempted robbery at the store on Seventh Street the night before the day of Mr. Bowers' death?

Mr. McCabe: I object because this man testified that he knew of no attempt at the store.

Mr. Bauman: I asked him during the time he was employed there.

The Deputy Commissioner: We will hear what he knows about it.

[fol. 53] The Witness: All I know is what I heard him say; I do not know positive about that.

Mr. Bauman: That is all.

By Mr. Bauman:

Q. Mr. Dunn, did you ever hear Mr. Bowers making any complaint about the condition of his ear?

A. I know that he has had trouble with his ear, sir.

Q. Well, did he ever state to you that he was having severe pain from it, or anything like that?

A. No, sir; I never heard him say anything like that.

Q. Do you know what the condition of his ear was?

A. No, sir, I do not.

Mr. Bauman: That is all.

Cross-examination.

By Mr. McCabe:

Q. About this money in the bank, how do you know what amount he had in the bank, Mr. Dunn?

A. Well, his wife—I have had his books in my own hand, sir; I do not remember the exact amount.

Q. You mean he had his bank book—and you saw that after the date of his death?

A. Yes.

Q. Did you go to the bank to see if he had that money there?

A. I did not go there; it was in the savings department. It was not deducted from the book.

Q. This was a balance that you saw he had in the bank?

A. Yes, sir.

Q. You told us on your direct examination about the gun you had when you were down at the store?

A. Yes.

Q. Did you have a permit for the gun?

A. I had a permit to own a gun, yes, sir.

Q. Did you have one at the time that you had the gun at the store? Did you have a permit then?

A. I have to have one. They have the records of the gun in the Police Department, where I bought it, and the purpose that I wanted it for.

Q. At the time that you wanted it, you had it at this store?

A. Yes.

[fol. 54] Q. Why did you have it there?

A. I thought it was good to have it there.

Q. When you bought the gun, did you get a permit for it?

A. I did not get a permit to carry it on my person; I bought it for home protection, home and office protection.

Q. Did you have the gun at your home?

A. I have now, yes, sir.

Q. Now, this gun of Mr. Bowers' that was found at the drawer in the store, at the time Mr. Bowers was found shot —I am discussing that now with you, he had had that gun ever since he was in Washington, had he?

A. Yes, sir.

Q. You saw the gun, did not you?

A. Yes, sir.

Q. What kind of a gun was it?

A. It was a thirty-two automatic.

Q. You had not been in this store for about a year prior to the time that Mr. Bowers was shot, had you?

A. Not to work there, I had not.

Q. You had not been there at all, had you?

A. Yes, sir; I think I had been there a couple of times.

Q. In your testimony before the Coroner—and I am reading it from Page 54 of the transcript of record in that hearing before the Coroner you — ask this question:

"Q. Had you been up to the store recently, at Seventh Street?"

and you answer:

"A. No, sir, I had not been in the store for a year, I guess."

A. I had not been in to run the store for a year or more.

Q. You were not being asked in this question whether you were in there to run the store. You were asked: "Had you been up to the store recently, at Seventh Street" and

you answered: "No, sir. I had not been in the store for a year, I guess." Is that true?

A. I cannot recall whether I had been in there or not, sir.

Q. So, you don't know?

A. I know that I went over one night out there and waited for him; whether I went in I don't know.

Q. You do not know whether you had been in the store in the past year or not?

A. I could not swear to it. I do not know for certain.

[fol. 55] Mr. McCabe: That is all.

Mr. Bauman: You may be excused.

The Deputy Commissioner: And you will remain inside.

Mr. McCabe: Unless he is to be used in rebuttal.

Mr. Bauman: I took it for granted that you would rather have me go into the whole thing at one time.

The Deputy Commissioner: I told you that I would—I would rather—well, I am here to pass on the case; it is up to you, whatever you want to do.

Mr. Bauman: Well, the Commissioner does not seem to agree with me that the law is——

The Deputy Commissioner (interposing): We are not bound by the common or statutory rules of evidence, and, by agreement, I told you that the rebuttal evidence was put on first, and I gave the Respondent every opportunity to introduce whatever evidence he wanted to to make the record up, in view of the fact that there had been nothing set up; that was the agreement and I am not dictating to you how you shall make your record.

Mr. Bauman: All right. We will put on everything. I understand that you want the facts?

The Deputy Commissioner: That is all. It is not a question of evidence, or further evidence.

Mr. Bauman: Now, what did you say about rebuttal?

Mr. McCabe: I say that if Mr. Dunn is to be used in rebuttal he should not stay in here. If you want to use him in rebuttal I would want him to be outside while the other witnesses are testifying.

Mr. Bauman: I think you had better step out.

The Commissioner asked him to stay in, though.

The Deputy Commissioner: I was following the regular form that we follow.

Mr. Bauman: He can go in a different room.

The Deputy Commissioner: No, that is not necessary. The witnesses have been instructed not to talk about this case.

(The witness thereupon was excused and retired temporarily from the hearing room.)

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Thereupon HIRAM KERMIT DUNN was called as a witness for and on behalf of the Claimant and, having been previously duly sworn by the Deputy Commissioner, as is above [fol. 56] indicated, assumed the witness stand and, upon examination, testified as follows:

Direct examination.

By Mr. Bauman:

Q. State your full name.
A. Hiram Kermit Dunn.
Q. Your address?
A. 3202 Perry Street, Mt. Rainier, Maryland.
Q. What, if any, relation are you to Mrs. Bowers?
A. I am her brother.
Q. Did you know Mr. Jeff Bowers, her husband?
A. Yes, sir.
Q. In his lifetime?
A. Yes.
Q. About how long had you known him?
A. I knew him——
Q. (Interposing.) Did you know them when they got married?
A. Yes, sir.
Q. I think that is sufficient. Are you in the employ of Mr. Del Vecchio?
A. Yes.
Q. At the present time?
A. Yes, sir.
Q. About how long have you been in the employ of Mr. Del Vecchio?
A. About a year and eight months, I think.
Q. Did you ever work at 1311 Seventh Street?
A. Yes.

Q. Do you recall what period of time you worked there?
A. What period of time?
Q. Yes; from what time and to what time?
A. I do not know exactly; I worked there about six or eight months.
Q. You worked there about six or eight months, while Mr. Bowers worked there?
A. Yes.
Q. Mr. Bowers was Manager of the store?
A. Yes.
Q. You worked under him then?
A. Yes.
Q. Were you working there at the time Mr. Bowers met his death?
A. No, sir; I was away for about two weeks.
Q. Mr. Dunn, what is the general character of the neighborhood there in the immediate vicinity of 1311 Seventh Street?
A. Well, it is very bad, I think.
Q. Is it white or colored?
A. Colored, mostly; mostly colored.
Q. Is it a peaceful neighborhood?
A. No, sir, it is not.
Q. What happens around there?
A. Well, there is a lot of fights going on, and things like that.
[fol. 57] Q. Was the store, during the time that you worked there, kept open on Saturday night?
A. Yes, sir.
Q. Was that more pronounced on Saturday night than at any other time during the week?
A. Sometimes.
Q. I mean the disturbance around there?
A. Yes, sir.
Q. And was Saturday night the only night that the store was open?
A. The store was open until seven-thirty.
Q. On week days until 7:30?
A. Yes, sir.
Q. Are you married, Mr. Dunn?
A. No, sir.
Q. You say that you worked at the store up until about how long before Mr. Bowers' death?
A. About two weeks.

Q. Two weeks?
A. Yes.
Q. Did you see Mr. Bowers after he left the store?
A. Yes, sir.
Q. I mean after you left the store?
A. Yes.
Q. You saw him during that two weeks?
A. Yes, sir.
Q. Mr. Dunn, what was Mr. Bowers' general disposition during the time you knew him?
A. I always thought that he was always jolly; he did not seem like he was worried about anything.
Q. Did he at any time, even up to the two weeks that you were in there, seem melancholy or despondent?
A. No, sir.
Q. Did you know that Mr. Bowers kept a gun there at the store?
A. Yes, sir.
Q. Did you ever have occasion to visit your sister and her husband?
A. Yes, sir.
Q. What were their attitudes toward each other? Did they seem to get along all right?
A. Yes, sir.

Mr. Bauman: That is all.

Cross-examination.

By Mr. McCabe:

Q. You saw this gun at the store, did not you?
A. Yes, sir.
Q. Did you know it was his gun?
A. Well, yes.

The Deputy Commissioner: May I ask where this gun was kept?
Mr. McCabe: I will get to that, if your Honor please.
The Deputy Commissioner: All right.

[fol. 58] By Mr. McCabe:

Q. You say the gun that they found there was his gun?
A. Yes.
Q. And you saw the gun that they found there at the time that it was found?

A. I do not swear it was his gun; it was there. It was the same gun.

Q. Do you know where it was kept, about?

A. Yes.

Q. Was it kept in a drawer?

A. Yes.

Q. In the same drawer that they found it in?

A. Yes, he kept it in the drawer most of the time.

Q. He kept it in the drawer most of the time?

A. In the other drawer; they had two drawers there.

Q. Now, he kept that gun in a holster, didn't he?

A. Yes.

Q. And that holster which was down there the day that he was found there was the holster in which this gun was kept, was it? Is that right?

A. Yes, sir.

Q. Now, you never discussed with him why he had the gun there, did you?

A. Oh, no; I never did.

Q. You never asked him as to why he had the gun there, did you?

A. Well, I knew——

Q. (Interposing.) You never asked him, did you, as to why he had the gun there?

A. No.

Mr. Bauman: May I submit that the witness can explain the answer after he answers "Yes" or "No".

The Deputy Commissioner: If he has any explanation to make he may make it.

By Mr. McCabe:

Q. Did you ever ask him—he said "No"; is that right?

A. That is right. I never asked him.

Q. And you never had any talk with him at all about the gun, did you?

A. Oh, no; it was always there; there was never anything said about it.

Q. You never at any time had any talk with him at all about the gun, did you?

A. Nope.

Q. Now, you were the first one to open the drawer where the gun was, were you?

A. Yes, sir.

Q. After Mr. Bowers was found shot?

A. Yes, sir.

Q. How was the gun laying, in the holster, or how was it?

A. It was out of the holster and the barrel was turned [fol. 59] towards like this (indicating); the gun, the barrel was turned this way (indicating) and the handle was towards the far end.

Q. I want to get this straight for the record. This store had a counter running around inside of it, did not it?

A. The counter was over on this side (indicating).

Q. As you went in, which way was the gun, which side?

A. It was on the right.

Q. It was on the right; the store runs in what direction, east and west?

A. I do not know exactly which way.

Q. The entrance to the store is on Seventh Street?

A. Yes, on Seventh Street.

Q. And you go straight back in?

A. Yes.

Q. Then, the store must run east and west because Seventh Street runs north and south.

I am trying to help you in regard to the directions. I am not trying to put something in the witness' mouth or to trip you up.

Mr. Baumann: Yes; I understa

By Mr. McCabe:

Q. Now, if the store runs east and west, the counter is on the right?

A. Yes.

Q. That counter ran all the way back?

A. Yes.

Q. Back to the end of the store?

A. Yes.

Q. And in past the gun is an aisle, is there not—that is I mean the counter where the gun was in the drawer?

A. Yes.

Q. And back of that, is there any drawer?

A. Right back of the store there is drawers where the gun is.

By the Deputy Commissioner:

Q. May I ask a question: Is there a counter shelf, or is it about so high (indicating)?

A. A counter shelf?

Q. Yes; a shelf on the top of the drawers, or do they run clear to the ceiling?

A. There is a counter with the cash register.

Q. That is back of the aisle?

Mr. Bauman: I was going to put a witness on the stand to show that.

[fol. 60] Mr. McCabe: This boy worked here, so we may get what he knows about it and later it will help later on when the officers go on the stand.

This boy worked here and he can give as good an explanation of it as anyone.

We have not been in the store and I want him to explain it.

By Mr. McCabe:

Q. This aisle runs down behind the counter?

A. Yes.

Q. How wide is the counter, about? How is it? Is it as wide as one of the tables here?

A. About.

Q. I guess that is about thirty-six inches?

A. About three feet; it is hardly that wide.

Q. Now, back of the counter, of course, is the aisle for the clerks to walk up and down between the counter and the back of the store. Is that right?

A. Yes.

Q. What Mr. Hoage was asking just now was if back of the aisle and over this drawer or these drawers that you were talking about, was there a place where things could rest on, over and above the drawers?

A. I do not get what you mean, over and above the drawers.

Q. Yes; that is it. At the back of the store?

A. Oh, back?

Q. Yes; near where Mr. Bowers was found, near the cash register. We are talking about the drawer where the revolver was found. Where was that in relation to the counter?

A. It was right on the counter.

By Mr. Bauman:

Q. It was right in the counter?

By Mr. McCabe:

Q. Right underneath the counter?
A. Yes, in the counter.
Q. So, when you say the muzzle of the gun was pointing toward the aisle, you mean the center part of the store?
A. No.

Mr. Bauman: No.

[fol. 61] By Mr. McCabe:

Q. Or the back part?
A. The back aisle.
Q. The aisle that the clerk went down?
A. Yes.

By the Deputy Commissioner:

Q. Was this an old fashioned cash till, or a regular drawer?

By Mr. Bauman:

Q. It was not a part of the cash register—well, could you demonstrate by using this table as the counter? Was it a drawer like this (indicating)?
A. Yes.

By the Deputy Commissioner:

Q. Just a straight drawer?
A. Yes.
Q. As I understand it, that was at the rear of the store? Is that right, Mr. McCabe?

Mr. McCabe: Yes; right near the cash register. We will establish where the body was found and the relation of the body to the cash register, and so forth, with the officers when they get on the stand.
They made an investigation.
The Deputy Commissioner: I see.

By Mr. McCabe:

Q. So, the revolver was out of the holster when you saw it, you say?

A. Yes, sir.

Q. And you stated before the Coroner's Inquest that it was just like somebody throwed it in there. Is that right?

A. Yes, sir.

Q. Did you see any blood on the drawer?

A. Yes, sir.

Q. Where was the blood that you saw?

A. Why, it was one drop, a couple of drops I guess on the drawer.

Q. Did you see any blood on the counter?

A. No, I did not see any blood on the counter. I do not believe—I might have seen it.

Q. The question was asked you by Mr. Collins, at the Coroner's Inquest, at Page 53 of the transcript:

"Q. Did you see any blood there?"

and you answered:

[fol. 62] "A. There was a couple of drops of blood in the drawer, and one on the counter."

A. I guess there was on the counter.

Q. Is that your recollection now?

A. Yes.

Mr. McCabe: That is all.

Examination in chief (resumed).

By the Deputy Commissioner:

Q. Did you pick up the gun?

A. No, sir, I did not. I started to pick it up.

Q. But you did not pick it up?

A. No, I did not pick it up.

Q. Do you know whether or not there had been any shells exploded?

A. No, sir, I do not know; only what they said.

The Deputy Commissioner: Are there any other questions, Mr. Bauman?

Mr. Bauman: No.

The Deputy Commissioner: Mr. McCabe?

Mr. McCabe: No.

The Deputy Commissioner: Shall we have him step outside, too?

Mr. Bauman: Yes.

(The witness thereupon was excused and retired from the witness stand and left the hearing room to await further instructions from the Deputy Commissioner.)

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Thereupon JOHN HOFFMAN was called as a witness for and on behalf of the Claimant and, having been previously duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness-stand and, upon examination, testified as follows:

Direct examination.

By Mr. Bauman:

Q. State your full name.

A. John Hoffman.

Q. What is your address?

A. 1424 Ninth Street, Northwest.

[fol. 63] Q. Mr. Hoffman, did you know Mr. Jeff Bowers in his lifetime?

A. I have known him within a year, about a year and a half.

Q. You have known him a year and a half?

A. Yes.

Q. Preceding his death?

A. Yes.

Q. Do you know what store he worked at, at the time of his death?

A. He worked at a store between N and O Streets, on Seventh Street.

Q. Where did you live—you said at 1424 Ninth Street at that time?

A. Yes.

Q. You lived there at that time?

A. Yes.

Q. How far is that store or your residence on Ninth Street from the store?

A. Well, that is about four or four and a half blocks.

Q. Mr. Hoffman, did you have occasion, just preceding the time of Mr. Bowers' death, to go to the Peoples' Hardware Store there on Seventh Street?

A. Yes.

Q. What was the occasion of your going there?

A. I went there to get some red metallic and some oil. I had two roofs to paint in the house that I was living at and I went to find out the price on the oil and the red metallic, and I found out how much it was and how many gallons of oil I needed.

Q. When was this, Mr. Hoffman? Can you place a time? Was this the day of Mr. Bowers' death that you spoke of?

A. Yes.

Q. What time of the day was it, exactly?

A. I do not know exactly.

Q. Well, about?

A. It was in the morning.

Q. Was it about around ten or ten-fifteen in the morning?

A. Somewhere in that time.

Q. The store was open for business, was it?

A. Yes, sir.

Q. And you went there to get some paint?

A. Yes.

Q. You, previously, having known Mr. Bowers for about a year or a year and a half?

A. I was there the day before that.

Q. Had you ever bought materials there before?

A. Yes.

Q. What kind of business are you in? What is your trade?

A. I am a carpenter by trade.

Q. A carpenter?

A. Yes.

Q. When you got there on this morning, September 10th —I guess you will admit it was September 10th?

Mr. McCabe: Yes.

The Deputy Commissioner: Yes; he has.

[fol. 64] By Mr. Bauman:

Q. You went in, and where was Mr. Bowers at that time?

A. He was waiting on some customers that were there; his store was right crowded at the time.

Q. Was there any other clerk there at that time?

A. No, sir.

Q. Did you wait to be waited on?

A. He told me to wait a minute, that he wanted to see me about something.

Q. Did you wait?

A. Yes.

Q. Then, did he finally come and talk with you?

A. Yes, sir.

Q. All right; what was said?

A. Well, he said he would talk about it, he would figure up the paint and the oil and he said that someone had broke into the back of the warehouse in back of the store and he did not think it was much of a job, but he wanted to know if I could come back and fix it.

Q. Did he say when it was that they broke in?

A. No; I think—I am pretty sure he said the night before.

Q. And then did you go back and look—where was the warehouse situated with reference to the store proper?

A. It was in the back.

Q. And he wanted you to fix it?

A. Yes.

Q. Did you look at it?

A. Yes.

Q. What condition did you find there?

A. The strip that covered both the doors that was practically off, and the hasp and the clasp were broke off.

Q. Had the lock been tampered with?

A. The lock was on the hasp and the clasp was rung off, with the board.

Mr. Bauman: I am not familiar——

The Deputy Commissioner (interposing): That is clear to me.

Mr. Bauman: That is all I am interested in, then.

The Deputy Commissioner: I thoroughly understand it.

By Mr. Bauman:

Q. What other condition existed there? Anything else?

A. Well, the bottom piece, where it slid on the track, was broke at the bottom; the door was swinging loose; the only thing holding it up was the track. You could walk through the alley and push the door up and walk right in.

Q. Did you give him an estimate of how much it would cost to fix that?

A. He said that he would bore the holes in the side of [fol. 65] the door; if he did that you could slide one way or another after it was locked, and I told him he could bore the holes in this side of the door and one on the other side, and he said that he would do that if I fixed the strip and there was some way to bolt the bottom of the door. I told him it would only take a little while and I would charge him one dollar for it. He said "All right; go ahead and do it."

Q. And did you go ahead and do it?

A. Yes.

Q. And you were working on that?

A. Yes.

Q. Then what happened?

A. I came in the store one time to get a bar to pry the top piece—the bottom piece was all split out, and I came in to get a bar to take the strip off, and he was waiting on a party in the glass department, and he told me "There is a bar standing up there and if you need any other tools they are sitting here in the corner", so I got the bar and I went on out.

I was working on it and had almost finished it and I came in for the, for something, and a fellow was buying a bulb or something——

Q. (Interposing.) A bulb?

A. An electric bulb, and I went on out and I told him that I would be in in a little while, and while I was out there I heard a noise like a bulb had blown out, or a fuse, and a noise like someone was in agony, hollering "Oh, oh", and I came on in and Mr. Bowers was laying in the aisle way, and with his feet at the end of the counter at an angle like he was going to walk across the aisle instead of straight down the aisle.

Q. Now, let's get the aisle straight. What do you mean?

A. It is between the two counters. It is a counter on one side and one on the other.

Q. Could you draw a diagram as to how the counters were laid off in the store? This is facing west (indicating on a piece of paper).

A. (Indicating.) This is Seventh Street.

By the Deputy Commissioner:

Q. Here is Seventh Street right here (indicating). Here is the store (indicating). How wide is that store?

Mr. Samuel Del Vecchio: It is sixteen or eighteen feet wide, but exceptionally deep.

[fol. 66] The Deputy Commissioner: How deep would you say?

Mr. Samuel Del Vecchio: I would say sixty to seventy feet deep.

The Deputy Commissioner: How big is the warehouse on the alley?

Mr. Samuel Del Vecchio: I judge around thirty by forty; in other words——

By Mr. Bauman:

Q. (Interposing.) It covered more than the lot, the front part of the store covered?

Mr. Samuel Del Vecchio: No, the front—I can draw it for you. This store would come to here (indicating).

(The witness, Mr. Hoffman, drew a sketch of his conception of the locale which is filed in the office of the Deputy Commissioner with the original papers in this case.)

By the Deputy Commissioner:

Q. Is there an aisle across back here, in the back part of the store?

A. Yes, a place to wait on the customers. This is the counter here (indicating). He had walked around this counter, see, and appeared to be——

Q. (Interposing.) Walked around the back end of the counter and turned to the left?

A. Yes.

Q. He was lying on the floor outside the counter?

A. Yes.

Q. With his feet in a diagonal position?

A. Yes.

Q. Right along like this (indicating).

A. Yes.

Q. Stretched out full?

A. Yes.

By Mr. McCabe:

Q. Will you place the body, the position of the feet and the head?

A. That is about the way it was (indicating).

By the Deputy Commissioner:

Q. Where was the head?
A. The head was toward the front.
Q. And this is the feet (indicating on the sketch)?
A. Yes.

Mr. McCabe: We might as well clear it up now.

[fol. 67] By the Deputy Commissioner:

Q. This is where the cash register was (indicating)?
A. Yes.
Q. And this is the drawer where the gun was found (indicating)?

Mr. McCabe: I don't know about the gun.
The Deputy Commissioner: Does he know where the gun was found?

By the Deputy Commissioner:

Q. Is that the place where the gun was found (indicating)?

Mr. Samuel Del Vecchio: The gun was in that drawer.

By the Deputy Commissioner:

Q. This is the cash register and this is the drawer where the gun was found (indicating)?

The Witness: Yes.
Mr. McCabe: Were you there when the gun was found?
Mr. Samuel Del Vecchio: Yes.

By Mr. Bauman:

Q. Is there any counter along here (indicating)?
A. Yes.
Q. These counters are about the width of this table?
A. Something like that.

Mr. McCabe: I understand that now. I am glad to get that description.

By Mr. Bauman:

Q. This is the warehouse back here (indicating)?

A. Yes. The warehouse runs the full length of it. There is a little walk-way there.

Mr. Samuel Del Vecchio: I could draw a minute diagram of the situation.

The Deputy Commissioner: This covers it.

(At this point it was noted that Detective Sergeant Truscott had made his appearance at the hearing room.)

[fol. 68] The Deputy Commissioner: Mr. Truscott is here.

Mr. Bauman: I think he should join the others.

The Deputy Commissioner: All right.

(Thereupon Dectective Sergeant Truscott retired from the hearing room to await the call of the Deputy Commissioner.)

The Deputy Commissioner: Do you want to introduce this drawing as a part of the record?

Mr. Bauman: No; I do not know whether it is correct or not. We can use it for what it is worth and Mr. Del Vecchio can give us an accurate diagram of just what the situation was.

That is substantially correct, I believe.

The Deputy Commissioner: All right.

By Mr. Bauman:

Q. Mr. Hoffman, was the merchandise in this warehouse in the back?

A. There was wire and stuff like that.

The Deputy Commissioner: I do not have quite in my mind the time of it. This was at about what time?

Mr. Bauman: About ten o'clock.

Mr. McCabe: 10:15, the Police Department shows.

The Deputy Commissioner: 10:15 a. m.?

Mr. McCabe: 10:15 a. m., September 10th, 1931.

The Deputy Commissioner: All right.

By Mr. Bauman:

Q. Do you know what time the store opens there, or did open there, Mr. Hoffman?

A. No.

Q. But the store was open and people were buying when you went around there?

A. Yes.

Q. And you know it was in the morning, sometime?

A. Yes.

Q. Did you use to see Mr. Bowers frequently, Mr. Hoffman?

A. I used to go in there and buy stuff. My wife used to buy cooking utensils and things like that.

Q. Did your wife know Mr. Bowers too?

A. Yes.

Q. Did you ever visit them socially?

A. No, sir.

Q. You never visited them socially?

A. No, sir.

[fol. 69] Q. What was Mr. Bowers' disposition, Mr. Hoffman, on occasions when you came in there?

A. Well, he was always jolly and cutting up.

Q. Did that continue up until the time of his death?

A. Yes, sir.

Q. What was his general attitude on the morning that you went there to get these things?

A. I did not notice any difference.

Q. Did he seem despondent or melancholy that morning?

A. Not to me, he did not.

Q. You were there the previous day, I believe?

A. I had gotten some green paint and white paint.

Q. Did you talk with him on the previous day?

A. Yes.

Q. Anything other than a casual conversation? Was that all that was carried on between you?

A. No; he was right busy, but he appeared to me to be all right.

Mr. Bauman: That is all.

Cross-examination.

By Mr. McCabe:

Q. In your testimony, Mr. Hoffman—I want this clear and that is why I am asking you this question—in your testimony given at the Coroner's Inquest, you were asked a question about—well, this is the question:

"Q. About how far would you say that place is, that you went to, from the end of the counter?"

that is after you left Mr. Bowers when you started to do this repair work, the question was:

"Q. About how far would you say that place is, that you went to, from the end of the counter?"

and you said:

"A. Maybe twenty-five feet; maybe more."

Is that about right?

A. I do not know exactly. I have never measured or looked the place over.

By the Deputy Commissioner:

Q. He is asking you approximately is that right as to the distance?

A. It may be a little further.

[fol. 70] By Mr. McCabe:

Q. Then the question is asked: "Is it a separate room?" That was the question, and you replied:

"A. Yes, sir. It is two houses below the store."

That is what I wanted explained. Was this below the store, two houses before?

A. I will tell you how it is. There is a store, itself——

Q. (Interposing.) Let me see this on the map that you have there.

A. (Indicating.) You see, here is the store here, and then there is another one. There is a little place, I judge a glass department and another place, a warehouse. In other words there is one building hooked on to the other.

Q. Where was the door you fixed?

A. Right in the middle of this last one here (indicating).

Q. Is this out further (indicating)?

A. Yes.

By Mr. Bauman:

Q. Is that the front or the back?

A. This (indicating) is the back.

By the Deputy Commissioner:

Q. Is it a double sliding door?

A. Yes, right in the middle of it.

By Mr. Bauman:

Q. On the alley?
A. Yes, on the alley.

By Mr. McCabe:

Q. Then you estimate it about twenty-five feet or possibly more from there into here (indicating)?
A. It could be more. I have never measured it.
Q. When you went back in there afterwards, after you started to work on this door, and you saw some customers in there buying an electric light bulb——
A. (Interposing.) The first one was buying glass, because he said that I would have to take the tools out there; there were some tools back in the corner. He said "See if you can find what you want there."
Q. When you came back and you found the body, what position was Mr. Bowers lying in? Was he lying on his back, or face?
A. He was lying on his stomach.
[fol. 71] Q. His stomach?
A. Yes.
Q. And you said you heard a sound prior to that, like a noise, like a fuse blowing out, or a bulb breaking?
A. No, it just sounded like a fuse had blown out.
Q. Like a fuse had blown out; and you heard someone saying "Oh, oh"?
A. Yes.
Q. And you came back?
A. Yes.
Q. You came back in the store and someone was groaning?
A. No, he was breathing right hard, then.
Q. Was the cash register closed?
A. I did not look at it; it must have been. I had to walk right close to it, to keep from walking on him.
Q. What did you do then?
A. I went to the street to see if I could see a policeman and I did not see any, and there was a bunch of colored men there and I asked them "Some of you fellows help me here; help fix this man; get him in a machine or take him to the hospital."
Q. Up to that time, did you know what was the matter with him?

A. I thought he was stabbed or something, because he had a place in his shirt and blood all down it.

Q. And how was he dressed?

A. I think he just had a shirt and a pair of blue pants on him.

Q. You saw some blood on the back of his back?

A. Yes.

Q. Did you see a hole in the back of his shirt?

A. I seen a little place; I could not say it was a hole. It looked like he had been stabbed to me.

Q. And he was laying face down?

A. Yes.

Q. And you went to get help?

A. Yes.

Q. Were you able to get any?

A. I could not, right there. There was no one out there to help me. I went to the 'phone, and one fellow came in and wanted to be waited on and I said "The man is sick, or stabbed, or hurt" and he said "You call the doctor at the hospital or somewhere and notify the police", so while I was over there another short fellow came in and he said "I will get the hospital and I will get the ambulance out. You help that man to put some cold towels on the sick man's head until the doctors get here."

Q. When you came in, was Mr. Bowers conscious?

A. No; of course, I asked him "My Lord, what in the world has happened in here", and he could not say a word.

Q. Now, did you leave the body in that position until the police came?

A. The police came right away. I think he was walking [fol. 72] down that way; the policeman came in there and he said "Don't touch the body at all".

Q. Now, how long from the last time you had seen Mr. Bowers waiting on people in the store, and you went out to repair the door, how long do you estimate the time was before you heard the noise?

A. I do not know. I was working pretty fast.

Q. Was it ten minutes?

A. It could be ten minutes; maybe half an hour.

Q. You were asked the question at the Coroner's Inquest and you said it was about ten minutes.

A. Something like that.

Q. Would your recollection be better now than it was at the time of the happening before the Coroner?

A. Yes, sir.

Q. Did you hear any noise of any scuffle or any fight, or anything while you were out there?

A. No, I never heard nothing.

Q. Did you make any search around there for a gun?

A. No.

Q. Did you see anything disarranged on the counter?

A. No; I thought he was stabbed; I did not look for anything.

Q. You thought he was stabbed because the blood was on his back?

A. And because, although I was hammering on the door, the door was on the track, it was hitting on the brick wall and the noise I heard was something like a fuse blowing out.

Q. But, between you and the place where Mr. Bowers was there was an intervening part of the door?

A. Yes.

Q. And you were at the extreme back of the second part, fixing the door; that is right on the alley. Is that right?

A. Yes, sir.

Mr. McCabe: That is all.

Redirect examination.

By Mr. Bauman:

Q. I believe I omitted to ask this witness—I know I started to ask him, about whether he lived here—where he lived; how far from his place about was it?

The Deputy Commissioner: He told you that.

[fol. 73] By Mr. Bauman:

Q. What I want to know about now is the character of the neighborhood of the store that is located on 7th Street, 1311 7th?

A. I know it is a pretty rough street. I lived at 9th and P, and very near every night I can see out there at 9th Street, and they are fighting and drinking there every night.

Q. Who is?

A. The colored fellows.

Q. There are quite a few colored people? This is practically a colored neighborhood on 7th Street?

A. Yes.

Recross-examination.

By Mr. McCabe:

Q. But, that is at night time that you see these men fighting?

A. Yes, and sometimes in the day.

Q. Are you at home during the day?

A. No, once in a while I am. I have a cabinet to make, if I have something like that to do, I come in and get some tools.

Q. So, you are not home during the day?

A. Not regularly.

Q. And any of those fights on the street are mostly during the evening?

A. Well, when I get home after 4 o'clock.

Q. Would you say then—Do you mean that these fights occur before that or after?

A. Well it is in the evening. They do not have them every day, but quite frequently.

Q. Well you have lived in other places in the city?

A. Yes.

Q. Have you seen fights there too?

A. No, not where I lived; not where I lived. It is a quiet residential section.

Q. And you live now where?

A. At 9th and P Street.

Q. Have you had much to do with 1311 7th Street?

A. 1311 7th?

Q. Yes?

A. Is that the hardware store?

Q. Yes.

A. What do you mean?

Q. Do you ever or did you ever live right at that point?

A. No.

Q. And how many squares or blocks is it from there to where you live?

A. Well, I live—that is between N and O, and I live between O and P Street, on 9th.

Q. Over two blocks and up one block?
A. No, it is about three blocks over.

[fol. 74] By the Deputy Commissioner:

Q. Over two blocks and practically down one block?
A. Yes.

Mr. McCabe: That is all.

By Mr. Bauman:

Q. But, Mr. Hoffman, you used to be at your place quite often and you would go over to the 7th Street store?
A. Yes.
Q. You were in the neighborhood quite frequently?
A. Yes.

Mr. Bauman: That is all.

(The witness thereupon was excused and retired from the witness stand.)

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Thereupon SAMUEL DEL VECCHIO was called as a witness for and on behalf of the claimant and, having been previously duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified as follows:

Direct examination.

By Mr. Bauman:

Q. Please state your full name for the record?
A. Samuel Del Vecchio.
Q. And your address?
A. My business address is 1434 Florida Avenue, Northeast.
Q. Mr. Del Vecchio, you are the son of Mr. D. Del Vecchio?
A. Yes, sir.
Q. The owner of the chain of People's Hardware Stores?
A. Yes, sir.
Q. You are in the employ of or associated with your father in business?
A. Yes, sir.

Q. And have been for some time?

A. Yes, sir.

Q. Are you a sort of a general manager for all of those hardware stores?

A. I have active control of the managing end of the business. I am in direct contact with the managers, practically daily with them.

Q. Of each store?

A. Yes, sir.

[fol. 75] Q. You knew Mr. Jeff Bowers, of course?

A. I did.

Q. About how long did you know him, Mr. Del Vecchio? Did you employ him?

A. I employed him personally.

Q. About when was that, do you recall? Approximately the number of years?

A. I cannot tell you the exact number of years but he came to this town at my behest. I wanted him to work for me and I think it was about two and a half years; I am not sure. I can look that up in the record.

Q. I just wanted the approximate time.

A. Yes.

Q. You knew Mr. Bowers before he came to the city?

A. No I did not.

Q. You had heard of him and that he was — good man?

A. Yes; I was in search of a good honest man and he was recommended to me as such. I wanted that kind of a man working for me.

Q. So, you brought him on here and put him to work at your stores?

A. Yes, sir.

Q. How long about preceding his death had he been manager of the 1311 7th Street store?

A. I do not know. I cannot tell you exactly.

Q. Approximately? Had he been there a year, do you know?

A. Yes, I believe he had.

By the Deputy Commissioner:

Q. Had he been manager ever since he was in the store?

A. He was put in the store as manager.

The Deputy Commissioner: I notice that the record shows, the employer's report shows that he was with them three years.

The Witness: Yes; he had worked first at the Cottage City store; we broke him in there with Mr. Dunn, and when he became more proficient we put him in the busier store at 18th and Columbia Road, and he showed such efficiency there that we made him manager of the store on 7th Street.

By Mr. Bauman:

Q. Mr. Del Vecchio, you have heard the testimony here as to the general character of that neighborhood up there on the 1300 block of 7th Street. Is that correct, as to the character of the neighborhood?

[fol. 76] A. It is correct. I do not believe they stressed it enough. I was there at a murder of a woman up there with an axe, on the corner of 7th and M Street; I saw her carried out.

Q. It is predominantly a colored neighborhood?

A. Yes; it is, and it is a very tough neighborhood.

Q. Now, Mr. Del Vecchio, it has been testified here that Mr. Bowers kept a gun there at his place of business. Did you know he had that gun there?

A. The first I knew of it was when Mr. Kermit Dunn opened the drawer and found it.

Q. On the day of his death?

A. Yes.

Q. You did not know previous to that that he kept a gun there?

A. No.

Q. Who managed this store previous to Mr. Bowers, Mr. Del Vecchio, if you recall?

A. We had considerable trouble getting managers to stay there; they did not like the neighborhood. I believe I had three managers in there at a short interval of time; the one previous to Mr. Bowers was caught by the Wilmark Service System——

Mr. McCabe (interposing): I do not see the relevancy of that.

By Mr. Bauman:

Q. You discharged him for cause?

Mr. McCabe: I object to this line of testimony. I see no connection between the case and this man's testimony about a previous manager.

The Deputy Commissioner: You are setting up the general condition of the neighborhood?

Mr. Bauman: Yes, and also I want to know if the previous manager and managers did keep revolvers at the store with his knowledge.

Mr. McCabe: I object to that.

The Deputy Commissioner: I want to know if that is the custom.

The Witness: I knew that Albert Dunn had a gun there.

By Mr. Bauman:

Q. That is the witness that testified?

A. Yes, and the manager before him; during the Christmas week he carried the gun on his person and he told me [fol. 77] about it; I knew it, and I allowed him to keep it there on account of the neighborhood.

Q. Now, Mr. Del Vecchio, do you know as to the condition of Mr. Bowers' accounts with your company, or with your father? That is as to whether his accounts were straight at the time of his death?

A. His accounts were in perfect condition, yes.

Q. Had you ever had any trouble with him relative to his accounts?

A. Never.

Q. Did you, how often did you, Mr. Del Vecchio, about, see Mr. Bowers?

A. I made it my duty to call at the stores not less than once a week; sometimes more. I never had a regular routine. I would drop in when I was least expected. That is part of my work.

Q. Did you ever know anything about the mastoid condition of his ear?

A. Well, the only thing I knew about it was that I allowed him, I believe, we gave him three or four days off to have an operation made, when he was working at 18th and Columbia Road. I am sure.

Q. That was in 1928?

A. I do not know the date. It was when he was working there then.

Q. It was not these occasions that Dr. Smart testified to when he went to the Episcopal Eye, Ear, Nose and Throat Hospital on August the 27th, 28th and 29th, 1931? That was not the occasion?

A. No, sir.

Q. Did he lose any time over this treatment?

A. I believe not. He would call me up and say he wanted to be off for a half an hour or so, to get something done for him at the hospital; but that is perfectly agreeable if they take a little time off, to make a payment on something on account, or something like that, not over an hour, we will allow them to do it.

Q. Did Mr. Bowers lose any great amount of time by reason of sickness during the time he was in your employ?

A. Well, outside of that operation I believe that is the only time he lost from health. He seemed to be very healthy and in good condition.

Q. What was his general disposition?

A. He was well, he was well liked by all the customers, very jolly and he was a southern boy and he was so good, and he cracked jokes with everyone, and everyone liked him, and he increased the business of the store tremendously through his personality. He had a splendid personality.

[fol. 78] Q. Did you notice any change in his disposition at any time preceding the occurrence of his death?

A. No; the first Thursday in the month we have store meetings and I believe it had only been a few days before when we had the meeting, the managers' meeting, at the main office, and he is always in a jocular mood and sometimes I had to call him down because he does too much talking while I am trying to get the attention of the managers in a business way; but he was always cheery and jolly.

Mr. Bauman: That is all.

I understand that the salary part is admitted.

The Deputy Commissioner: Yes.

By Mr. Bauman:

Q. Except this: Can you draw, Mr. Del Vecchio, can you draw a plan of the general situation of the store up there on 7th Street?

A. I think I can draw a better one than this (indicating a sketch drawn by Mr. Hoffman).

Mr. Bauman: Would you care to have that?

The Deputy Commissioner: This is all right.

The Witness: This does not give a true picture of the

situation and it is an injustice to everyone. It should be definitely known exactly how the store is.

(At this point the witness Del Vecchio drew a sketch which was filed in the office of the Deputy Commissioner with the original papers in this case.)

The Witness: The depth of the alley to the door of the warehouse is 25 feet.

The depth of the warehouse is about 16 feet. I measured that because I thought it might come up.

This (indicating) is what Mr. Hoffman referred to as the glass apartment, and this is an open door here (indicating) and here we keep our drums of oil (indicating).

Here (indicating) is the register, and the register drawer opens this way (indicating).

By the Deputy Commissioner:

Q. Toward the back end of the store?

A. The drawer where the gun was found is here (indicating).

[fol. 79] Q. On the side of the counter?

A. Yes, right here (indicating), and this is a glass table (indicating) and this is an aisle to the store (indicating).

Mr. Bauman: That is all.

The Deputy Commissioner: That can be marked the Del Vecchio sketch.

(As is above indicated, the sketch was so marked.)

The Witness: I might add that the counter is only 28 inch to 30 inches wide. It is not a wide counter there.

Mr. McCabe: Are you through?

Mr. Bauman: Yes.

Cross-examination.

By Mr. McCabe:

Q. After Mr. Bowers was found shot, Mr. Del Vecchio, you went down to the store, did not you?

A. Yes, sir.

Q. When you got there, was the body still there?

A. No, it had been taken away.

Q. They had taken the body away?
A. Yes, sir.
Q. Did you see this—were you there when Mr. Dunn was there?
A. Which Mr. Dunn?
Q. The second Mr. Dunn that testified, the youngest.
A. H. K.?
Q. Yes?
A. Yes, sir.
Q. Were you there when he found the gun in the drawer?
A. I was, sir.
Q. You did not know that the gun was there, did you?
A. I did not know it.
Q. You never gave Mr. Bowers permission to have a gun there, did you?
A. Well, not knowing the gun was there I could not give him the permission.
Q. That is what I asked you; if you did give him permission to have the gun there?
A. But, if he had asked, I certainly would have given it.
Q. I am asking you to answer the question. That was not the question that I asked you.
I object to anything that you may add.

The Deputy Commissioner: Just answer the question.
[fol. 80] The Witness: Your Honor, the question is put in a wrong way.
The Deputy Commissioner: You are not discussing the way the question was put. Answer the question.
The Witness: What is the question?
Mr. McCabe: Will you read the question?
The Reporter (reading):

"Q. You never gave Mr. Bowers permission to have a gun, did you?"

The Witness: Permission was never asked of me.

By Mr. McCabe:

Q. But you never gave it?
A. No, of course not; it was not asked.
Q. Now, at the time that you were there, the time you went through the store, after Mr. Bowers was reported shot, you did not find anything showing that he was in the procedure of cleaning the gun, did you?

A. No, I saw nothing that would indicate that.

Q. You had never given him any orders to keep a gun at the store, had you?

A. I had given——

Q. (Interposing.) Will you answer this one question?

By the Deputy Commissioner:

Q. Had you ever given him any instructions to keep a gun at the store?

By Mr. McCabe:

Q. Had you ever given him any orders to keep a gun there?

A. No.

Q. Now, when you reached the store, you made a check of the cash register?

A. Yes, sir.

Q. What did the cash register show?

A. It balanced. There was nothing short.

Q. Now, the last sale which was made on that cash register——

A. (Interposing.) I knew at the time of the Coroner's Inquest, but I cannot recall at present.

Mr. Bauman: He was going to make a statement to you; he did not ask you.

Mr. McCabe: No. He is quicker on the trigger than I am and got a little ahead of me.

[fol. 81] Q. The last sales registered by Mr. Bowers, you testified at the Coroner's Inquest, was 45 cents, a sale for 45 cents. Do you recall that?

A. I remember a 45-cent sale.

Q. I am asking you this because of a coincidence there. The man came back. I will read the testimony at page 45 of the transcript of the report of the Coroner's hearing: This is the testimony of Samuel Del Vecchio:

"Q. The last sale that was registered on this cash register was what?"

and the answer was:

"A. The last sale registered by Mr. Bowers was 45 cents."

Then the following occurred:

"Q. Have you no way of timing that?

"A. No, sir, we have not, except that it was a coincidence that while I was there, and while the detectives were investigating, a colored workman from Ottenberg's Bakery came in at the time and brought back with him a 75-watt electric bulb which he had purchased from Mr. Bowers and paid 45 cents for, and had received a receipt. He brought that receipt back with him, and stated that it was the wrong size, and he wanted a larger size, so I made the exchange for him, and the larger bulb was 15 cents more, and he asked for another receipt. I understand he had to turn the receipts in for the cash paid out to his boss. He asked for another receipt for the additional 15 cents, and I gave him the receipt for the 15 cents, and he took the bulb back, and I asked him at the time if Mr. Bowers had sold him the bulb for 45 cents, and he said Yes, that he had, and he showed very great surprise when I told him that Mr. Bowers had either been shot or stabbed. We did not know at the time what it was. He said: 'Well, if you need me, I am down at Ottenberg's Bakery and I will be glad to come up here and tell anything I know.'"

Q. So, in your mind, was this the 45-cent sale which had been made?

A. Yes, I guess it was.

Q. Was there a cash register check in among the money of any kind?

A. Yes.

[fol. 82] Q. Was there any evidence of robbery in the store?

A. Well, in the store that has a stock of $10,000, you cannot——

Q. (Interposing.) You never have found anything missing as a result of that episode?

A. No.

Q. Now, you looked at this drawer but could not find anything?

A. Yes.

Q. Did you see some blood spots in the drawer?

A. I believe I saw a few spots; yes, sir.

Q. Did you see blood spots in the drawer around the counter?

A. Yes, sir.

Q. Right to where the body was?
A. Yes, sir.

Mr. McCabe: That is all.
The Deputy Commissioner: I have one or two more questions.

Examination in chief (resumed).

By the Deputy Commissioner:

Q. Did you ever tell Mr. Bowers not to have a gun there?
A. No, sir.
Q. Had you ever given other managers permission to have a gun there?
A. Not explicit permission; I knew they had it there and never objected to it.
Q. Was it customary for managers to have a gun handy around the store?
A. In that particular store it was.
Q. It was not against any regulations?
A. No, sir; we have no regulation against that.

(The witness thereupon was excused and retired from the witness stand.)

Mr. Bauman: That is the complainant's case.
The Deputy Commissioner: Do you want to put the other Mr. Del Vecchio on?
Mr. Bauman: I do not think he knows anything about the accident. The only purpose for having him here was to produce the record of salary and so forth.
The Deputy Commissioner: That is your case, then?
Mr. Bauman: Yes.
The Deputy Commissioner: Mr. McCabe, how long will it take you to complete your case?
Mr. McCabe: Quite a long time.
The Deuty Commissioner: Will you see if there are any witnesses who could be heard immediately before lunch?
[fol. 83] Mr. McCabe: I would like to introduce the certificate of death.
Mr. Bauman: But, it has no bearing on this case.
The Deputy Commissioner: Do you want to introduce it?
Mr. McCabe: I do. It is the customary thing in death cases.

The Deputy Commissioner: If you have no objection to this being admitted—it is a copy of the official records of the District of Columbia.

Mr. Bauman: Yes, I have, Mr. Commissioner, and just for the purpose of protecting my client on the record I will say that I do not think that any recital in that has any bearing on this case here.

Your are not precluded by any verdict of a Coroner's Jury from arriving at your conclusion in this matter.

The Deputy Commissioner: We will admit it as the record of the District of Columbia, a certificate of death issued by the Health Department of the District of Columbia, No. 51662, signed by E. J. Schwartz, M. D., Assistant Health Officer of the District of Columbia, which is the proof of death in the case of Jeff Bowers.

Mr. Bauman: I realize that we have not a jury here and the Commissioner can segregate material from immaterial evidence; but, that has no bearing on the proof.

The Deputy Commissioner: That will be given consideration.

(The transcript from the record of death of the District of Columbia, Health Department, Transcript No. 51662, was thereupon received in evidence as "Respondent's Exhibit No. 1" and, as such, is filed in the office of the Deputy Commissioner with the original papers in this case.)

Mr. McCabe: Detective Sergeant Truscott is here but he is the only one that is here so far. He tells me that Sergeant Dalglish is in Baltimore and Sergeant or rather Lieutenant Fowler is also out of the city. He will be back tomorrow.

I have not seen anything of Dr. Donaldson.

The Deputy Commissioner: Will he be back tomorrow?

Mr. McCabe: We might hear that testimony tomorrow.

[fol. 84] The Deputy Commissioner: We will have to set a time when we can hear him.

I could call for Dr. Donaldson.

Is Mrs. Mobley here?

Mr. McCabe: No, she is not here.

The Deputy Commissioner: Is Mr. E. W. Barnes here?

Mr. McCabe: Yes, Mr. Barnes is here in case I want to use him.

The Deputy Commissioner: And Mr. Austin?

Mr. McCabe: Yes, but I do not know if I will use them. I can put Mr. Truscott on now.

The Deputy Commissioner: All right.

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Thereupon Detective Sergeant FLOYD A. TRUSCOTT was called as a witness for and on behalf of the respondent and, having been previously duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified as follows:

Direct examination.

By Mr. McCabe:

Q. State, please, your full name?

A. Floyd A. Truscott.

Q. What is your address?

A. 1011 Girard Street, Northeast.

Q. You are attached to the Detective Bureau, Homicide Squad?

A. I am.

Q. You made an investigation in the case of the death of Jeff Bowers, did not you?

A. I did.

Q. Do you recollect when that was?

A. I do not recall the exact date; it was the latter part of August or the early part of September.

Q. The Police Report——

A. (Interposing.) I have not looked at it to see.

Q. It shows 10:15 a. m., September 10, 1931?

A. That is just about right.

Q. That is the date when his body was found?

Mr. Bauman: The 10th of September.

The Witness: My best recollection is it was somewhere in the last of August.

By the Deputy Commissioner:

Q. If the death certificate says the 10th of September, would that be the date?

A. That would be the correct date.

[fol. 85] By Mr. McCabe:

Q. We are just trying to help you fix that day. It has been some time since that occurred.

A. I understand.

Q. Now, about when—when you got there, was the body still there?

A. No, sir. I first saw the body before I went to the place where it occurred, at the Casualty Hospital.

Q. Was Mr. Bowers dead then?

A. Yes, he had just died.

Q. Was there any wound on his body?

A. Yes.

Q. Where was it located?

A. One in the front and one in the back.

By the Deputy Commissioner:

Q. Just whereabout? Do you mind putting your finger on it, as near as you can?

A. As near as I can put it, it is about here (indicating).

The Deputy Commissioner: The witness is indicating to the left of the mid-line and toward the left nipple, and about two inches from the mid-line.

Mr. Bauman: Yes.

By the Deputy Commissioner:

Q. Where was the one on the back?

A. Almost straight, but not quite; just inclined a little to the right of the spine.

Q. To the right of the spine?

A. No, to the left.

Q. To the left of the spinal column?

A. But further to the right than the one in the front.

By Mr. McCabe:

Q. But the same side of the body?

A. Yes, it was all on the left side of the body.

Q. The bullet had gone right through and come out the back?

A. That is correct.

Q. Now, what did your investigation consist of at the store?

A. My investigation at the store consisted of finding where the body was found, the position, the locating of the bullet, the locating of the gun, the locating of the ejected shell, and questioning the man who found the body and the last customer that we were able to locate that was in the store, and also conversations with a brother-in-law, I believe it was.

[fol. 86] Q. Will you tell us about your investigation, just what you did, for the purposes of the record, and what you found?

A. Do you want everything we did or what the facts brought out?

Q. Everything that you did and the facts brought out?

A. I cannot tell you everything I did at this time.

Q. Would it refresh your recollection if you heard read your testimony before the Coroner's Inquest?

A. No, not on the salient facts; they are still in my mind. We first endeavored to locate——

By Mr. Bauman:

Q. (Interposing.) When you say "We" who do you mean?

A. Sergeant Dalglish and myself went to the hospital, and also to the scene.

Q. Sergeant who?

The Deputy Commissioner: Sergeant Dalglish he said.

Mr. McCabe: Sergeant Dalglish; he will be here.

The Deputy Commissioner: Go ahead.

The Witness: We found the bullet *that penetrated some* pain- cans opp-site a drawer in the counter, near the rear part of the store.

We finally found the bullet, that is the lead bullet, in one of the paint cans, and a brother-in-law—I won't say which —he was a red-headed gentleman.

By Mr. McCabe:

Q. Mr. Dunn, that is right; you are right.

A. He called my attention to a drawer and to the fact that Mr. Bowers ordinarily kept a gun in there and he pulled it open and there was a gun lying there; he did not touch it.

I later removed that gun from that drawer and the gun, at that time, was with the muzzle toward the direction in which the drawer opened, and the body of the man to the rear of it; also in that drawer were several small blood stains, fresh, and also on the edge of the counter, right above the drawer were also one or two blood stains.

By the Deputy Commissioner:

Q. Just a moment. Was the drawer closed?

A. The drawer was closed, yes, sir; just flush straight with the counter, not closed entirely but just flush with [fol. 87] the line of the counter.

The Deputy Commissioner: I see.

The Witness: There was also a holster in the drawer, but the gun was not in the holster.

The holster, however, was in the opposite direction from what the gun was; that is where the body of the gun would ordinarily fit in the holster was just the reverse direction; in other words, the gun was with the body up here (indicating) and the opening in the holster was this way.

Q. The holster was in the front of the drawer there so as to reach and get the gun quickly?

A. Yes.

By Mr. McCabe:

Q. As you picked up the gun did you smell of the barrel?

A. I did.

Q. Did you smell any powder?

A. I cannot say that I did. I had a cold at that time.

Q. Do you know whether Sergeant Dalglish smelled of it?

A. I cannot say. I know that Lieutenant Fowler did and an hour or so later when I submitted it to him.

By the Deputy Commissioner:

Q. Well, then, did you examine the gun?

A. I examined the gun, yes.

By Mr. McCabe:

Q. What did you find?

A. Several cartridges in it, in the magazine, and we also noticed at that time where the bullet had hit one or more cans—we could not determine the line of fire exactly.

Q. What did you determine the line of fire?

A. Well, it was on an angle from the point across where this drawer would be on the counter, diagonally where the bullet was found in the man.

Q. About how high up was the bullet away?

A. Just practically the same height the bullet would be in the man.

Q. You mean where the gun had entered, the bullet?

A. Oh, that was breast high.

[fol. 88] By the Deputy Commissioner:

Q. It went through on the level about?

A. Almost on the level.

By Mr. McCabe:

Q. Did you find the shell that came out of that gun?

A. I did. It was by the counter, toward the front of the store in some trays that were there.

Q. About how far was it?

A. My best recollection at this time was 12 or 15 feet.

By the Deputy Commissioner:

Q. Have you had experience with guns, in that way?

A. I have.

Q. Will an automatic throw a shell that far?

A. Yes.

By Mr. McCabe:

Q. What kind of a gun was that?

A. A 32 caliber Colt automatic.

Q. When this gun was fired, does it automatically eject the shells?

A. It does, and usually to the same side. The Colt ejects to the right and usually ejects on a general right angle.

Q. So if this man were standing facing the middle of the store and had had that gun pointed in toward him, and shot it off, could you reasonably expect to find the shell where you found this shell?

A. Yes, sir.

By the Deputy Commissioner:

Q. It would be on the right of where the man stood when it was ejected?

A. In fact, that was my theory in looking for it and finding it where I did find it.

By Mr. McCabe:

Q. Did you see any blood stains on the floor around where the body was found?

A. I do not recall noticing any blood stains on the floor, but there were some about the cash register.

[fol. 89] By the Deputy Commissioner:

Q. Do I understand it was a 32 caliber bullet that was found?

Mr. McCabe: Yes.

The Witness: Yes, sir.

By the Deputy Commissioner:

Q. And I did not get quite clearly just what direction from the man the shell would be, a man facing the gun.

A. A man facing the gun, with a gun pointed toward him, the shell would eject to his left; he would be to the right of the gun.

Q. And that was the direction you found it at?

A. Yes, about 12 to 15 feet from where the drawer was.

By Mr. McCabe:

Q. That is where the drawer was, where the gun was found. Is that right?

A. Yes.

I was also present at the time Lieutenant Fowler made a ballistic test of the gun, of the shell and of the bullet, and they were, that is the bullet and the shell were both shot from Mr. Bowers' gun.

By the Deputy Commissioner:

Q. Were there finger prints on the gun?

A. No, sir.

By Mr. McCabe:

Q. Now, here is a map made by Mr. Del Vecchio. On this map here this is shown: that this is the drawer that the gun was found in, near the end of the counter, and this is

the cash register which, I understand, faced toward 7th Street, and here is the back of the store (indicating). Where was that drawer in which the gun was——

A. (Interposing.) The map is not in very good proportion. The drawer was not that close to the cash register.

By the Deputy Commissioner:

Q. This is the shelving back of it.

A. Take it as it is; it is all right with me.

Q. This would be the line of the bullet (indicating)?

A. No, not exactly; more like this (indicating).

[fol. 90] Q. Now, where was the shell found?

A. The shell was found up the counter here (indicating).

Q. Will you just mark it on the sketch?

(The witness marked the Del Vecchio sketch.)

The Witness: This is mighty wide in proportion. I will put it about here (indicating).

By Mr. McCabe:

Q. That is about 12 to 15 feet?

A. Yes.

Q. Is that all right? The shell was found 12 to 15 feet from the drawer?

Mr. Bauman: Yes.

By Mr. McCabe:

Q. What other investigation did you make?

A. We got in touch with certain doctors who had been treating Mr. Bowers for ear conditions; they all testified as to his condition, what they treated him for.

By Mr. Bauman:

Q. You say "They all"; there was only one.

Mr. McCabe: Dr. Rogers was there.

The Witness: There were two doctors testified at the Inquest.

Mr. Bauman: You inferred that there were more than one testified at the Inquest about treating him for his ear.

Mr. McCabe: Yes; Dr. Snow testified.

The Witness: If I recall correctly, there was two doctors testified about that.

Mr. McCabe: Yes; Dr. Smart and Dr. Snow.

The Witness: We inquired about his financial condition. I had taken charge of his shirt and undershirt and submitted them to Dr. Donaldson the microanalyst, as to powder stains.

By Mr. McCabe:

Q. Will you describe what you saw on the shirt?

A. There were two bullet holes; one front and one back.

Q. Were there any powder marks on the shirt?

A. There was a slight substance at the time I took [fol. 91] charge; the blood was still wet; that looked to me like powder marks, which was my reason for taking charge of it and his report verified after that that they were powder marks.

Examination in chief (resumed).

By the Deputy Commissioner:

Q. May I ask: Is there any record to show or has any investigation been made to show how far powder will stain?

A. You mean in this particular instance?

Q. A bullet, shot from a 32 revolver?

A. Yes, sir; there have been tests made.

Q. Are you acquainted with those tests? And findings?

A. No, I cannot give them to you accurately; I might give you a good idea, though.

Q. About how far, in your opinion?

A. Powder will stain up about 12 inches, but in varying quantities.

Q. And area too?

A. If a gun is point blank, it will have its effect on a very small area; as you take it back the area spreads but the density decreases.

Q. At 12 inches, how about that? What area will that cover?

A. It varies with different makes of guns.

Q. Take a 32 Colt?

A. A 32 Colt, the area would be—that is the total area would be very spattered; it would be approximately three and a half to four inches in diameter.

Q. How large was this stain?
A. This was very small in diameter.
Q. Indicating that it was from close range?
A. From close range; point blank range; practically point blank range. It was just around, a very small area, around where the bullet itself penetrated.

The Deputy Commissioner: I see.

Redirect examination.

By Mr. McCabe:

Q. You have had a number of experiences with suicide cases?
A. I have.
Q. And you have examined them and made investigations of them?
A. I have.
[fol. 92] Q. From your experience in this case, and from where this bullet wound was, was it such a wound as should have been made by the man himself? I mean is it such a wound as the man himself could have made?
A. It is my opinion that it could have been self-inflicted.

Mr. Bauman: I object to that.
The Deputy Commissioner: Yes; that is a conclusion.

By Mr. McCabe:

Q. Now, did you have a conversation at the store with a man who said that he was the brother-in-law of Mr. Bowers?
A. I did.
Q. Did you talk about Mr. Bowers' health at that time?
A. I did.
Q. Do you recollect what he told you?
A. I do not recall.

The Deputy Commissioner: Now, is this rebuttal?
The Witness: Only the general depression.
The Deputy Commissioner: He said a brother-in-law of Mr. Bowers?

By Mr. McCabe:

Q. Was it a boy with red hair?
A. I think so.

Q. Was it the boy right here (indicating one of the witnesses)?

A. I talked to him; also he—I talked to another gentleman whom I recall wore eyeglasses.

By the Deputy Commissioner:

Q. Is he sitting out there now?

A. Yes.

Mr. McCabe: I will identify Mr. Dunn for the purpose of asking this next question.

The Deputy Commissioner: All right.

By Mr. McCabe:

Q. I will ask you if this brings back any recollection regarding your conversation with Mr. Dunn, and I will ask you to identify this Mr. Dunn, if you can.

I am reading now from page 34 of the transcript of testimony taken at the Coroner's Inquest. The question was asked you:

[fol. 93] "Q. Did you talk to any members of the family of this man?"

and you answered:

"A. There was a conversation there in the store yesterday with a man who said he was a brother-in-law."

Then you were asked:

"Q. What did he have to say about the thing?"

and your answer was, according to this record:

"A. He told us that the deceased had been rather despondent recently, and some time ago he had been operated on for ear trouble, which we later ascertained from the doctor was mastoid trouble, and that he had recently been to the doctor again for treatment, and that he seemed to be feeling right bad about the trouble he was having with his ear."

Do you recollect making that statement?

A. I do.

Q. Do you recollect making it?

A. I do.

Q. Does that bring back your recollection?

A. That was about my recollection of it before you read it?

Q. What?

A. I say that was about my recollection of it before you read it except for the mastoid; I forget about that, just what the trouble was with his ear.

Mr. McCabe: Now, I will ask the first Mr. Dunn, the eldest one, Mr. Benjamin Allen to come in.

(Mr. Dunn was summoned to the hearing room and in his presence the following occurred:)

By Mr. McCabe:

Q. Is this the gentleman, Mr. Truscott?

A. Yes, sir.

Q. That you had that conversation with?

A. Yes, sir.

Mr. McCabe: That is all.

(Mr. Dunn then retired from the hearing room.)

Mr. McCabe: He identified as——

The Deputy Commissioner (interposing): Benjamin Allen Dunn.

[fol. 94] By Mr. McCabe:

Q. Is that right?

Mrs. Bowers (the claimant): Yes.

Mr. McCabe: That is all.

Cross-examination.

By Mr. Bauman:

Q. Mr. Truscott, where did you say this conversation took place?

A. In that store, at 1311 7th Street, Northwest.

Q. Shortly after the——

A. (Interposing.) Shooting.

Q. Yes.

A. Yes, shortly after the shooting, yes, sir. It was within two hours afterwards.

Q. You were there investigating this with a view to ascertaining whether there were any clues for murder of suicide?

A. I was investigating to find out just what happened, as near as possible.

Q. What is your best recollection now as to what that conversation consisted of?

The Deputy Commissioner: You mean with Albert Dunn?

Mr. Bauman: Yes.

The Witness: I cannot begin to recall the entire conversation.

By Mr. Bauman:

Q. Is it not a fact that you asked if there was any reason why Mr. Dunn might know of why Mr. Bowers should shoot himself, whether he had been sick or despondent?

A. No. As I recall it, he volunteered all information along that line and that first started us asking about it.

Q. Do you recall what his voluntary information was?

A. Not just what was said at the time, no. There was something that he said that started us asking him about it. In fact, we did not know that he was related to him at the time we started to ask him. That is how we happened to know who he was and what he was.

By the Deputy Commissioner:

Q. Do I understand that Mr. Dalglish was with you at that time?

A. He was in the store; I do not recall that he was stand-[fol. 95] ing right where I was or not; there were two or three other officers there, also, at the time Mr. Dalglish and I went there together, but one might be here and one might be there, and Mr. Dalglish might be in one part and me in another part of the store and he might not be there at the same minute.

By Mr. Bauman:

Q. Did you come to know of anything about an attempted breaking in of the premises there on the preceding night?

A. I heard about that, yes.

Q. Did you investigate that?

A. No, sir.

Q. You did not investigate it?
A. No.
Q. You were told about the attempted robbery?
A. I understood that that was the reason for the carpenter being there fixing the back gate; there was nothing to connect the two things at all and there was no reason why anyone should have tried to break in and murder a man.
Q. No; not along that angle, but whether or not a man would be inspecting his revolver to see if it was in working order.
A. No, there was no reason why we should do that because if some one was breaking in at night he would not come in in the day time; he would not have an opportunity to use it any way.
Q. You heard of the attempted breaking in?
A. I heard of that, yes. That is what accounted for the presence of the carpenter being there at the time.

Mr. Bauman: That's all I care to ask just now.

Redirect examination.

By Mr. McCabe:

Q. About this gun: when you examined it, how many shells did you find in it?
A. I cannot tell you exactly; at that time there were several. I can give you a guess, that is about all; about four, if I recall correctly.

By the Deputy Commissioner:

Q. What is the capacity of it?
A. The capacity is, I believe, eight in the magazine and one in the chamber when fully loaded.

[fol. 96] By Mr. McCabe:

Q. Do you recall whether it was fully loaded?
A. No, as I recall it was not fully loaded.
Q. Was this turned over to the ballistic expert?
A. Yes.

Mr. McCabe: We can develop that later on.
The Deputy Commissioner: All right.

By Mr. McCabe:

Q. It was turned over as it was found?

A. With the exception that the magazine was removed, but in the same container; at the time we removed it for safety sake.

Q. Just took the magazine out and put the gun in the bag to keep the finger prints on it?

A. Yes.

Q. And you turned the gun over to the ballistic expert for careful examination; is that right?

A. Yes.

By the Deputy Commissioner:

Q. As I understand it, you did not examine the gun itself or you did not find any finger marks on the gun?

A. There were no finger marks on the gun; just the sides of a finger; not enough to develop a finger print, however.

Q. If a man was inspecting an automatic gun to see whether it was loaded and in shape, how would he naturally pick it up?

A. How would he pick it up?

Q. Yes?

A. The only position that I know of would be in the right hand and hold it there and shove it back with his left hand like that (indicating).

Q. Would you shove it away from you or pull it to you?

A. You would be shoving on to your side, but if you were not holding it close in your right hand that would be turning the gun this way (indicating).

Some people might hold — in their hand this way and some others this way (indicaating). Personally I hold it in my right hand in this way and in holding it that way you can examine it just like this (indicating).

By Mr. McCabe:

Q. When you took out the magazine, or went to see it, to see whether it was loaded, while you were taking out that magazine, the gun could not go off?

A. While taking it out?

[fol. 97] Q. Yes?

A. Not if your finger is not on the trigger.

Q. In the ordinary course, when you are holding the butt, it is not necessary for you to put your finger on the trigger?

A. Taking the magazine out and seeing if it is loaded for firing is two different operations. The magazine only throws the loaded cartridge into the firing chamber on the recoil; you can work that by hand also. The operation——

The Deputy Commissioner (interposing): I think I understand it.

The Witness: The operation is to see——

The Deputy Commissioner (interposing): I have that exact type.

The Witness: To see if there is anything in the magazine you use a catch and that would not affect the firing of the gun at that time, and also would not tell you anything. I do not recall whether that is a safety clip on it or not. I know it has a side safety on it.

By Mr. Bauman:

Q. Where is that gun now, Mr. Truscott?

A. With the property clerk of the District of Columbia Police Department, unless it has been destroyed.

Q. And where is the shirt?

A. I think in the same place.

Mr. Bauman: That is all.

By Mr. McCabe:

Q. I suppose we could have those brought up; it may be well when we have the testimony about it?

A. Yes.

Mr. Bauman: I do not think it would be a bad idea at all.

The Deputy Commissioner: Unless you have some doubt about the description the man has given; if the bullet went through on the level and entered from the left of the sternum and went through on the left side of the rib at about that level, that is about all we could find.

Mr. McCabe: Dr. Joseph D. Rogers performed an autopsy on the body and there is Dr. Donaldson.

[fol. 98] The Deputy Commissioner: Let us wait until we conclude the hearing and if you still feel that you need it we will get it.

Mr. Bauman: I thought it would be a good thing to have in here, particularly on the question of the powder burns.

The Deputy Commissioner: There will be other testimony on that?

Mr. McCabe: Yes; Dr. Donaldson.

Mr. Bauman: The testimony of this witness was rather vague and indefinite to be final on that question.

The Deputy Commissioner: Is that all the questions you have to ask at this time?

Mr. Bauman: That is all.

Mr. McCabe: Yes; that is all.

(The witness thereupon was excused and retired from the witness stand.)

The Deputy Commissioner: Are there any other witnesses that we can hear now?

Mr. McCabe: No, but Dr. Donaldson will be here at 1:30.

The Deputy Commissioner: Then, we will take a recess until 1:30 for further testimony to be taken.

(Thereupon at 12:45 o'clock a recess was had until 1:30 o'clock p. m. this date.)

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## After Recess

(The above-entitled matter came on for further hearing at 1:30 o'clock p. m., pursuant to recess heretofore taken, whereupon the following proceedings and transactions were had and testimony taken:)

Mr. McCabe: Dr. Donaldson is here now.

The Deputy Commissioner: All right, I will swear Dr. Donaldson in at this time.

Thereupon Dr. Edwin R. Donaldson was duly sworn by the Deputy Commissioner.

The Deputy Commissioner: You may proceed, Mr. McCabe.

Thereupon Dr. Edwin R. Donaldson was called as a witness for and on behalf of the respondent and, having been [fol. 99] previously duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified as follows:

Direct examination.

By Mr. McCabe:

Q. State your full name, please?
A. Edwin R. Donaldson.
Q. What is your address?
A. 821 Sheridan Street.

The Deputy Commissioner: Do you want to qualify the Doctor?

Mr. Bauman: We will see how is progresses.

By Mr. McCabe:

Q. You are a chemist, attached to the Police Department?
A. Yes.
Q. How long have you been there?
A. Since October 1, 1930.
Q. Is it part of your duties—and before that, where were you, Doctor?
A. I was in business with another gentleman in Silver Springs; prior to that with the Bureau of Standards.
Q. As a chemist?
A. As a chemist.
Q. Have you specialized in powder marks on clothing?
A. That is part of my training.
Q. In connection with your work at the present time, did you have occasion to examine the clothes for powder marks and make determination as to how these powder marks get on clothes and so forth?
A. Not as to how they are classed——
Q. (Interposing.) But——
A. (Interposing.) Identification of the stain only; only as to identification of the stain.
Q. Do you remember the case, Doctor, of Mr. Jeff Bowers?
A. Yes, sir.
Q. You were called to make certain investigations just prior to the Coroner's Inquest in that case?
A. Yes.
Q. That was about when, September 10th?
A. September 10th.
Q. Will you tell just what those investigations were?
A. Well, on the 10th, I received a package from Detec-
[fol. 100] tive Sergeant F. A. Truscott of the Homicide

Squad, at 2:55 p. m., and it contained one blue shirt, collar attached, and one pair of B. V. D.'s, and the purpose of bringing this package was to see if there were any powder stains on the shirt or undershirt.

The shirt contained particles of unburned powder in the vicinity of the point of entrance of the bullet, just above the upper right end corner or right hand corner of the pocket.

There were no powder stains visible on the underclothing, the B. V. D.'s.

By the Deputy Commissioner:

Q. The upper right hand corner of the pocket of the shirt?

A. Yes.

By Mr. McCabe:

Q. What side of the shirt was the pocket on?

A. The pocket was on the left hand side; looking at it, it was the upper right hand corner.

By the Deputy Commissioner:

Q. That would carry it about how far from the mid-line of the shirt?

A. Why, that would probably be approximately four to six inches; in that vicinity.

By Mr. McCabe:

Q. Looking at the mid-line in front, it would be to the right six inches?

A. About that.

By Mr. Bauman:

Q. To the left, would it not?

A. Looking at it from the front it would be on the left side of the shirt but to the right of the observer.

That is the way I made my examination. The shirt was lying out flat before I made the examination.

By Mr. McCabe:

Q. Did you find any charring there of the shirt?

A. I found particles of unburned powder and burned powder.

Q. Could you form any idea from your experience with [fol. 101] cases of this kind how far away the muzzle of the gun was held from that shirt?

A. That is something very hard to determine. I would not want to qualify on that. It depends on what the caliber of the gun is that is used and the charge of powder, and whether it is an automatic or a revolver, and I do not know which kind of gun it was.

As to the distance you can't say unless you know all those things.

Q. Did you know all those things at that time?

A. No, sir, I did not know what kind of a weapon it was.

Q. At the Coroner's Inquest, you stated that—and I am reading from page 61 of the transcript of record, you said:

"On examination, it disclosed that there was much unburned powder, and there was also a section of the shirt, at the entrance of the bullet, that was charred, which showed evidence of close contact of the gun that had been fired. I should say that it was within two or three inches. There was close contact, at least, when the gun was fired. That is about all I did for him."

Does that refresh your recollection any?

A. I remember I was cross-examined, I believe, and they did ask how close it was and I told them approximately two or three inches; it was close contact; as to definite distance, I cannot say.

Q. Now, was the clothing burned any?

A. Only in the immediate vicinity of the hole.

Q. But it was burned?

A. It was burned.

Q. When you received this, were you told and was there a designation showing whose clothing that was that you examined?

A. I was given the information by Detective Sergeant Truscott that they were taken from Jeff Bowers.

Q. And this was on the 10th, you say?

A. On the 10th of September. I finished my examination on the 10th also and I gave Sergeant Truscott the package right away, after I made my examination. It is my date of entrance and completion of the test, as of on the 10th.

Mr. McCabe: That is all.

[fol. 102] Cross-examination.

By Mr. Bauman:

Q. Doctor, you say there was unburned powder marks in the vicinity of the hole?

A. Yes.

Q. Would that indicate one way or another as to whether or not the muzzle of the gun from which the bullet was fired was directly up against the clothing, or a distance away from it?

A. It would be visible in either case.

Q. It would be visible in either case?

A. My test—I have constructed tests to the distance of 12 inches; beyond that my laboratory is not air-resistant enough and particles are carried away, but I have carried out the procedure where particles will be carried and deposited on the target at a distance of 12 inches.

Beyond that I have not attempted my tests.

Q. Now, bringing the muzzle of the gun closer, would there be less likelihood of unburned powder marks appearing on the object?

A. That depends on the individual charge in the cartridge. They vary. They are supposed to be the same charge in each cartridge, but it varies slightly and their actions vary due to the air currents.

This is getting away from my work and into the subject of ballistics and I am not qualified to testify on that.

However, I do know something about it. My close contact with similar work has taught me something about that.

Q. Do you know, though, whether or not a revolver could be held close to an article and up against an article and fired and then unburned powder marks appear around that article?

A. Yes, they have.

Q. That could be?

A. Yes.

Q. So, as qualified as you are to speak on it, that is your best opinion, is it, say two or three inches?

A. I should say so.

Mr. Bauman: That is all.

Redirect examination.

By Mr. McCabe:

Q. The charring, too, shows, does it not, that it was close?

A. Yes.

[fol. 103] Q. The farther away the less charring you get?

A. There is no charring when you get beyond a certain point, say of four inches or thereabouts, between four and five inches; really charring does not occur. It is only particles of unburned powder and burned powder. Small pieces of powder will be deposited which does not char the particle itself, that is the fabric.

Q. And you found charring in this case?

A. Yes.

Q. That hole went straight through the shirt, did it?

A. Well, the shirt was of very thin material; whether it went straight through or not I could not tell by my examination; the shirt was thin.

By the Deputy Commissioner:

Q. Was there any hole on it to indicate where it went through?

A. I do not recall seeing any hole on the back of the shirt.

Q. Is there a relatively large space covered by burned powder and unburned powder if the gun is farther away?

A. At close contact there is a very small area; that area grows larger to a certain point and then recedes again.

Q. Is it more dense then from the closer range or from a distant range?

A. Yes.

Q. So you have the area covered as well as the char-ing to indicate close range?

A. Yes, and particles of burned and unburned fabric will be imbedded directly into the fabric.

The Deputy Commissioner: I have no other questions, Are there any other questions?

Mr. McCabe: No, I have none.

Mr. Bauman: I have nothing further,

(The witness thereupon was excused and retired from the witness stand.)

Thereupon Mrs. Thomas Paul Mobley was called as a witness and, having been first duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified as follows:

Examination in chief.

By the Deputy Commissioner:

Q. What is your full name?
A. Mrs. Thomas Paul Mobley.
[fol. 104] Q. What is your address?
A. My address is 1115 9th Street Northwest, Apartment No. 4.
Q. Did you get a subpœna that was sent to you?
A. I did not get it until 11 o'clock this morning.

The Deputy Commissioner: I see.

Direct examination.

By Mr. McCabe:

Q. How long have you been here, Mrs. Mobley?
A. I just came in.
Q. Have you talked to anybody about this case?
A. No, sir; I just asked this lady please if this was Mrs. Bowers; that is the only thing I said.
Q. You knew Mr. Jeff Bowers?
A. Yes, I did.
Q. Do you remember the day he died?
A. Yes.
Q. Were you in the store that morning?
A. Yes, sir.
Q. About what time did you go in the store?
A. Well, I got up to the store there before he had opened; I got up that morning before he had opened. I was standing waiting for him when he opened. I had gotten up there before he was open; it was anywhere from 9:30 to 20 minutes to 10.

The Deputy Commissioner: I might say that I have just discovered in the record that Mr. Kenney representing the insurance company filed in this office on January 20th a request for the service of a subpœna on this witness.
Mr. McCabe: That is my fault.

The Deputy Commissioner: Any failure on her part to be here I will have to attribute to the lack of notice.

By Mr. McCabe: You can blame me for that. I was engaged in Court in North Carolina and I was tied up with another case and completely forgot about this pending hearing.

Q. And, when he opened the store, when you got there it was about 20 minutes after 9?

A. No, 9:30 or 20 minutes to 10.

Q. You went there to do what in the store?

A. I went there to do a little trading, like I would always do.

Q. Now, when you—You had known Mr. Bowers for some [fol.105] time, had you?

A. I have known Mr. Bowers; I just came up there to Northwest Washington; I was living at the time that I first got acquainted with him at 814 L Street Northwest; that is Mr. Bill Jones' house. I used to go up to the store quite frequent, see, to go up and buy bottle caps.

Q. When you went in there did you discuss different things with Mr. Bowers?

A. Yes, sir; I always discussed things with Mr. Bowers.

Q. Did you discuss his family relations with him?

A. No, sir, he never did discuss his family with me whatever. I knew he had a wife.

Q. Did he tell you ever about any trouble that he had with his wife?

A. No, sir, never did he say one thing to me; he told me I believe that he lived in Mt. Rainier; I think that is it. I just won't say it for sure.

Q. Did he ever tell you that his married life was unhappy?

A. No, sir; he never did discuss it; he always seemed to be a fellow that really enjoyed life some; more like that he had everything to live for.

Mr. McCabe: That is all.

The Deputy Commissioner: Have you any questions, Mr. Bauman?

Mr. Bauman: No, sir. I have no questions.

(The witness thereupon was excused and retired from the witness stand.)

Mrs. Mobley: May I be going for the day? Am I through?

The Deputy Commissioner: You are through for the day, yes.

(At this point there was an informal discussion between the Deputy Commissioner and counsel for the respective parties which the Deputy Commissioner directed be not recorded and at the conclusion of which the following occurred:)

The Deputy Commissioner: Is there any objection to admitting the testimony of Dr. Rogers which was given at the Coroner's Inquest?

Mr. Bauman: No, I have no objection.

I glanced through Dr. Smart's testimony and had I been present at the Coroner's Inquest—I was not; I have never seen or heard his testimony—I would have asked him about it.

[fol. 106] Would you have any objection to the question being put as to whether or not he testified to this at the Coroner's Inquest and assume that his answer would be "Yes". You are producing Dr. Rogers' testimony and it is agreed that it would be presumed he would testify to that if he was here.

Now, there is a part of Dr. Smart's testimony where he testifies in answer to a question:

"Q. At any time did a patient come under your personal care by the name of Jeff Bowers?"

and he answers:

"A. Yes. I saw Mr. Bowers twice in my office."

and then he was asked:

"Q. At any time did he appear depressed over this condition?"

speaking of the condition of the ear and Dr. Smart said:

"A. Well, he didn't have very much to say. He did not strike me as being very depressed at the time. That was the first time I saw him in the office. Then the last time I saw him was the 29th of August, up at the Episcopal Hospital, and talked to him a short while up there. I told him that it would probably take him some time to get over this condition, and it might necessitate another operation,

but first we wanted to see exactly how much trouble he had, and also to have an x-ray picture made. He did not impress me as being very much depressed about his condition, because, if I understood him correctly, he had had this condition for about five years, and he also had an operation on it. I could not say that he impressed me as being at all depressed."

Mr. McCabe: Mr. Bauman's point is that he did not know that the Doctor said this at the Coroner's Inquest.

The Deputy Commissioner: Do you want to put in both Dr. Smart's testimony and Dr. Rogers' testimony at the Inquest?

Mr. McCabe: Mr. Bauman asked that—Oh, I will stipulate that and let it in.

(The text of the testimony of Dr. Joseph D. Rogers and Dr. James A. Smart, given before the Coroners of the [fol. 107] District of Columbia at the Inquest held over the body of Jeff Bowers, deceased, is appended hereto and made a part of this record pursuant to the directions above indicated.)

Mr. Bauman: Now, Mr. McCabe, I understand that you won't have Dr. Snow here?

Mr. McCabe: No.

Mr. Bauman: You subpœnaed him. I think I would like to have his testimony go in here, that is the testimony that he gave at the Coroner's Inquest.

Mr. McCabe: I was not particularly satisfied with Dr. Snow's examination; he was given a very short examination by Dr. McDonald and there were things which I would have liked to have questioned him about.

Mr. Bauman: That may be true about Dr. Rogers' testimony.

Mr. McCabe: Yes, and you could refuse to admit Dr. Snow's testimony or rather Dr. Rogers' testimony. I would not admit Dr. Snow's testimony unless I had an opportunity to examine him.

I am willing to go along with you and admit as to Dr. Smart's testimony.

Mr. Bauman: All right. I know it is not properly here. I thought it had a bearing on the case.

Mr. McCabe: Dr. Smart was given quite an examination here and went more thoroughly into the questions, but

apparently Dr. Snow did not, and his testimony continues only on one page.

Mr. Bauman: The only part I am interested in is his opinion as to the effect that the ear condition was having on the deceased.

Mr. McCabe: Yes, but I would like to show that there are lots and lots of people that have a depressed condition and they do not show it to a doctor. The doctor doesn't know anything about it. There are lots of them that way.

The Deputy Commissioner: Just what part of the record is it agreed will go in?

Mr. Bauman: I think all of it is competent.

The Deputy Commissioner: But Dr. Rogers' statement and Dr. Smart's statement as indicated is agreed on?

Mr. Bauman: Yes.

[fol. 108] Mr. McCabe: Yes; Dr. Rogers' testimony starts at page 6 and runs through to page 9, the top of the page.

The Deputy Commissioner: Now, do you have other witnesses, Mr. McCabe? What other witnesses have you?

Mr. McCabe: Just Police Department witnesses.

The Deputy Commissioner: Just witnesses from the Police Department?

Mr. Bauman: I would like to have a few in rebuttal. I think I can cover my rebuttal in one hour.

The Deputy Commissioner: You want some of the other witnesses too?

Mr. Bauman: I have one or two new witnesses, people who were acquainted with Mr. Bowers, other than relatives.

The Deputy Commissioner: Will it be cumulative?

Mr. Bauman: Along certain lines, yes, sir; that is as to his outlook on life, and so forth.

The Deputy Commissioner: You have two or three or four witnesses on that already.

Mr. Bauman: Yes, but if the Commissioner will observe, they are all relatives. That is the only kind of witnesses I have had so far, practically. I have others that I would like to submit. I did not understand the question of suicide was an issue in this case from the pleading of it. I thought the sole question was whether it was a case that arose out of and occurred in the course of employment.

The Deputy Commissioner: Then you leave the names of the witnesses that you want subpœnaed.

Mr. Bauman: I will furnish those.

The Deputy Commissioner: Then, the hearing will be continued until the 29th for the purpose of hearing further testimony.

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(The testimony of Dr. Joseph D. Rogers and of Dr. James A. Smart, which it was agreed and directed be included in this record is as follows:)

"Dr. Joseph D. Rogers was called as a witness and, having been first duly sworn, testified as follows:

"The Witness: Dr. Joseph D. Rogers, Deputy Coroner. I performed an autopsy upon one Jeff Bowers on the 10th day of September, 1931, 4 p. m. He was white, about 30 [fol. 109] years of age, height 6 feet, weight 175 to 185 pounds. He had no clothing above the waist. He had a bullet wound of entrance 3½ inches from the mid line and 1½ inches above the left nipple, going through the chest, at about the same level, coming out 1½ inches from the left of the spine. The lung was punctured. There was a tremendous amount of hemorrhage into the left pleural cavity. There were eight small marks about the entrance of the wound that would indicate powder burns. The clothing—the shirt and undershirt—was not with the deceased at the time of the autopsy, but examination this morning shows powder marks on the outside of the shirt. They are not distinguishable on the undershirt.

Death in this case was due to gunshot wound, left lung, hemorrhage and shock.

By Deputy Coroner MacDonald:

Q. Doctor, from your descriptions and observations in this case, could this shot have been fired by this individual?

A. Yes, it could have been.

Q. Taking into consideration, of course, the powder marks, and the course of the bullet?

A. Yes.

Deputy Coroner MacDonald: Any questions?

By Mr. Collins:

Q. Doctor, there is no question about the fact that the point of entrance was in the front and not in the back?

A. No; there is no question about it.

Q. As I understood you, it punctured the lung?

A. Yes.

Q. Did it puncture the heart?

A. No, sir.

Q. From your observations of the injury there that caused his death, could that man, under any circumstances, have moved immediately following the firing of that shot?

A. Yes.

Q. How far do you think he could have moved?

A. It is hard to say exactly how far. It depends on how rapid this hemorrhage was; the vitality of the man; and how much nervous force he had to make himself move.

Q. What I am anxious to determine, Doctor, is whether or not the wound was of such a character as to cause immediate death?

A. It was not.

[fol. 110] Q. Could you estimate how long he lived after the wound was inflicted—I mean, from the organs that were touched by the bullet?

A. No. I understand he only lived a short time. I could not say exactly how long.

Q. Could he have taken three or four steps following the shooting?

A. Yes, following the shooting.

Q. Do you think he would have sufficient strength left with which to have gone to a drawer in the counter and placed a gun in there?

A. He might have.

Q. What is your best thought in the matter?

A. When a bullet goes through a lung, you do not get all that hemorrhage at once. You are losing blood, but you can do a good many voluntary acts for a few seconds afterwards, or maybe a minute, or two minutes.

Q. Assuming that he was behind the counter, could he have walked around that counter and out to the front of the counter in that time?

A. He might have. Sometimes they fall and close a drawer themselves. I have seen several cases where persons shot themselves through the heart and fell and closed a drawer, and the pistol would drop in the drawer, and the man falling would close the drawer of the bureau or table.

Q. A man's ability to do anything after a wound of this kind would be less, would it not, if he were shot through the heart, than the way this man was?

A. Yes. If he were shot through the heart, it would be fatal more quickly; but even then sometimes they make some movements afterwards."

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"Dr. James Smart was called as a witness and, having been first duly sworn, testified as follows:

By Deputy Coroner MacDonald:

Q. Your full name?

A. James A. Smart.

Q. Your address?

A. 1026 15th Street, Northwest. That is my office address.

Q. You are a practicing physician here?

A. Yes.

Q. Any specialty, Doctor?

A. Ear, nose and throat specialist.

Q. At any time did a patient come under your personal care by the name of Jeff Bowers?

A. Yes. I saw Mr. Bowers twice in my office. The first [fol. 111] time, I think, was about the 25th of last month, August. He came to consult me in regard to an ear condition, and this condition he stated was that he had had for the past five years a chronic discharge from his left ear, a discharge of pus from the left ear. He gave me the history, that he had had an operation on his left mastiod, about a year and a half ago, at the George Washington University Hospital. This operation, he said, was not a success, and his ear was worrying him considerably because it did not seem to be getting any better. He had seen no doctor since his ear was operated on, because the doctor, as I understand, that operated on him is not now in the city. At any rate, he came to consult me, to ask my advice about what he could do about this chronic discharge from his left ear, and also from the fact that for the last two or three weeks his ear caused him considerable pain.

I made an examination of him, and I asked him if he could get away from his work to come to my office to take some treatment, and also I asked him if he could get away from his work at certain hours to come to see me. He said it was very hard for him to do that, because he was not very well able to get away from his store. I think he said he worked from about 7 in the morning until about 6 at night, and it was a very hard thing to get away. He did not seem to be very worried about his ear, but I told him about what it would cost to have it treated, and he said he didn't think he had any money, that he had to spend a lot having it operated on a year and a half ago. So I then told him, if he could not afford to take any treatments, that I would send him to the Episcopal Ear, Nose and Throat Hospital Clinic, and write him a letter up there whereby he would be able to get an examination and treatment without it costing him a whole lot. I also advised him to have an X-ray picture made of his ear, because I thought it might develop into something serious.

Q. At any time did he appear depressed over this condition?

A. Well, he didn't have very much to say. He did not strike me as being very depressed at the time. That was the first time I saw him in the office. Then the 1st time I saw him was the 29th of August, up at the Episcopal Hospital, and talked to him a short while up there. I told [fol. 112] him that it would probably take him some time to get over this condition, and it might necessitate another operation, but first we wanted to see exactly how much trouble he had, and also to have an X-ray picture made. He did not impress me as being very much depressed about his condition, because, if I understood him correctly, he had had this condition for about five years, and he also had an operation on it. I could not say that he impressed me as being at all depressed.

Deputy Coroner MacDonald: Any questions?

By Mr. Collins:

Q. Doctor, what is your experience as to the amount of pain that condition which you found to exist there subjects a man to, ordinarily?

A. This man came to see me, I think for the sole reason he came to see any doctor, on account of having some pain. For the last week or two, he had had it. But those cases very often cause no pain at all—just the discharge of pus from the ear, with no pain. Sometimes they gradually become more painful. I think that was the reason he consulted me, simply because it was commencing to pain him. He said it was commencing to pain him more at night, and he could not sleep very well on account of it.

Q. Is that situation typical of that condition?

A. I did not have a chance to examine the man thoroughly. I wanted to find out just what sort of an operation he had had at George Washington, whether the operation was what we call a simple mastoid, or whether it was a radicla mastoid. In other words, if it had been a simple mastoid operation, he should have had no discharge from the ear following this operation. In other words, it should have cleared up within a month or two after he had had the operation, and the very fact that he still had this discharge from his ear following the mastoid operation was why I wanted to examine him again and have some more X-ray pictures made, because I know that if he continued to have this pus drain from his ear, the pain would be likely to become more intense as time went by.

Deputy Coroner MacDonald: Any other questions?

Mr. Collins: No."

(Thereupon the instant hearing was concluded.)

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[fol. 113] I hereby certify that the foregoing is a complete and accurate transcript of my shorthand report of the testimony and statements, etc., presented at the described hearing.

——— ———, Official Reporter.

Before Hon. R. J. Hoage, Deputy Commissioner for the
MISSION FOR THE DISTRICT OF COLUMBIA

Before Hon. R. J. Hoage, Deputy Commission for the District of Columbia

No. 1960-6

Mrs. BONNIE L. BOWERS, Widow of Jeff Bowers, Deceased, Claimant

VS.

D. DEL VECCHIO, Trading as People's Hardware Stores, Employer; Merchants' Mutual Casualty Company, Insurance Carrier

TRANSCRIPT OF TESTIMONY AT HEARING

Pursuant to notice, this matter was heard before Honorable R. J. Hoage, Deputy Commissioner, United States Employees' Compensation Commission, at Washington, D. C., on the 29th day of January, 1932, at 9:30 o'clock a. m.

Appearances:

Chapin Bauman, Esquire, on behalf of the Claimant;
James E. McCabe, Esquire, on behalf of the Respondent.

COLLOQUY

The Deputy Commissioner: This is a continuation of the hearing in the case of Mrs. Bonnie L. Bowers, widow of Jeff Bowers, Claimant, the employee, against D. Del Vecchio, trading as People's Hardware Store, the Employer, and the Merchants' Mutual Casualty Company, the Insurance Carrier.

The original hearing having been held on the 22nd day of January, 1932, the case was continued for the purpose [fol. 114] of hearing further testimony which is to be presented at this time.

The parties present at the continued hearing are:

Mrs. Bonnie L. Bowers, the Claimant, and represented by her attorney, Chapin Bauman, Esquire.

The witnesses on behalf of the Claimant are Charles W. Shaver, Davis B. Eiland, and Odus Eiland.

Are there any other witnesses?

Mr. Bauman: I understand that Mrs. Shaver is on her way down.

She did not want to put her under subpœna—that is Mrs. Bowers did not because she is not well.

The Deputy Commissioner: She will be here?

Mr. Bauman: She is on her way, I am informed.

The Deputy Commissioner: Very well. Representing the Respondent is Mr. Kinney and Mr. James E. McCabe.

The witnesses on behalf of the Respondent are: Policeman John B. Monroe who will be here later I understand?

Mr. McCabe: Yes, that is what I understand.

The Deputy Commissioner: And Lieutenant John H. Fowler and Detective Sergeant John C. Dalglish. They will be here, I understand.

Mr. McCabe: Yes.

The Deputy Commissioner: Then I will swear the witnesses who are here.

(Thereupon the Claimant, Mrs. Bonnie L. Bowers, and the witnesses, Charles W. Shaver, Davis B. Eiland, Odus Eiland and Mrs. Mariella Shaver were duly sworn by the Deputy Commissioner.)

The Deputy Commissioner: Do you want to exclude the witnesses?

Mr. Bauman: Yes; it is up to Mr. McCabe. He wanted to exclude them the last time.

The Deputy Commissioner: Remember that you are all under oath, so please do not discuss this case with anyone except your attorney in the course of the hearing.

(The witnesses thereupon retired from the hearing room to await the call of the Deputy Commissioner.)

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Thereupon JOHN W. SHAVER was called as a witness for and on behalf of the Claimant and, having been previously [fol. 115] duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified as follows:

Direct examination.

By Mr. Bauman:

Q. Mr. Shaver, did you know Mr. Jeff Bowers during his lifetime?

A. Yes.

Q. About how long did you know him, Mr. Shaver?

A. I have lived in that neighborhood four years; I knew him and was a neighbor of his for three years of the time, and for about a year or a little more he lived next door to me, and naturally I had occasion to know him pretty intimately.

Q. Did you know—about how long did you know Mrs. Bowers, about the same time?

A. Yes.

Q. And Mr. Bowers lived next door to you with Mrs. Bowers for a year or a little over?

A. Next door, yes.

Q. Are you married, Mr. Shaver?

A. I am.

Q. And you live next door to the Bowers with your wife?

A. Yes.

Q. Did you become intimately acquainted with Mr. and Mrs. Bowers during the period that they lived next door to you?

A. We had every occasion to; he used my garage and in every case when he came in, if he saw a light around or saw me, he would stop and talk with me and naturally I ran over and talked to him quite frequently and would go in the house; most of the time we would sit on the porch, though; Mrs. Bowers would be there and my wife together.

Q. How close were the two houses together?

A. A driveway, I imagine nine or ten feet there.

Q. About how many times a week would you say that you saw Mr. Bowers during the period that he lived next door?

A. About seven.

Q. Every day?

A. Practically every day.

Q. And he used your garage?

A. Yes, he used our garage.

Q. And when he came home in the evening and would see the car in the garage—you have a workshop in your cellar?

A. Yes.

Q. He dropped in and talked with you?

A. Yes.

Q. And you dropped over to his house?

A. Very often after supper I would go over and talk with him until he fell asleep, and then it was time for me to go home.

[fol. 116] Q. Did Mrs. Shaver visit the Bowers?

A. They were together back and forth all the time.

Mr. McCabe: I object to what Mrs. Shaver did.

By the Deputy Commissioner:

Q. To your knowledge, did Mrs. Shaver do that?

A. Mrs. Shaver has been over to Mrs. Bowers' with me and I would be in the house with Mrs. Bowers when she was there.

By Mr. Bauman:

Q. You have been there with her?

A. Yes.

Mr. Bauman: I think that is sufficient, Mr. Commissioner.

By Mr. Bauman:

Q. Now, Mr. Shaver, from your observation of Mr. Bowers, what would you say as to his disposition?

A. Bright; sunny; cheerful. I never knew him to be anything else.

Q. Now, did your intimate acquaintance with Mr. Bowers extend up to what period, up to what time?

A. Up to the day before his death; the evening before his death.

Q. That is the last time you saw him alive?

A. Yes.

Q. What was the occasion? What time of the day was it previous to his death?

A. Why, about between seven and eight, when he would get home from the store in the evening; he drove his car in the garage and saw a light in my cellar and he came in and he stayed there ten or fifteen minutes to talk over things and laughed and joked and had just generally a good time.

Q. On that occasion did you request him to bring you anything the next day?

A. He was to bring me a couple of pounds of nails and two or three cans of paint. I wanted to finish up a little job. He stated that he would bring them home that night when he came.

Q. What was his general appearance and attitude and disposition on that occasion?

A. Why, I guess he was just about as happy and contented as I was.

Q. During the period you knew Mr. Bowers did he ever appear melancholy, depressed, or downhearted?

A. I never knew him to be.

[fol. 117] Q. Now, Mr. Shaver, relative to the relations that apparently existed between Mr. and Mrs. Bowers, what would you say as to whether they were agreeable, happy and loving, or whether they were quarrelsome, or otherwise?

The Deputy Commissioner: This is only as far as he observed.

Mr. Bauman: I think I laid the foundation of his observation.

The Witness: Absolutely agreeable and happy.

By Mr. Bauman:

Q. Mr. Shaver, did you ever have an opportunity of observing Mr. Bowers' attitude toward his little son?

A. He thought the world of him.

Q. Answer it "Yes" or "No"; whether you had the opportunity.

A. Yes.

Mr. McCabe: I object to this line of testimony.

The Deputy Commissioner: Let him tell what he observed, Mr. McCabe, if it has any bearing.

Mr. McCabe: I object to this, subject, of course, to connecting this up.

By Mr. Bauman:

Q. What did you observe?

A. He always seemed to be with him; the child always wanted to be with him. It did not seem to be too much trouble to drop anything he was doing to take the child.

Mr. McCabe: I still maintain the objection is well founded. I do not see what connection it has.

The Deputy Commissioner: I do not either; it will be weighed for what it is worth.

Mr. Bauman: But, Mr. Commissioner——

The Deputy Commissioner (interposing): You do not need to discuss it. I am allowing it in for what it is worth.

By Mr. Bauman:

Q. Do you know, Mr. Shaver, whether during the past summer Mrs. Bowers went away for any length of time?

A. She was gone, I think it was pretty near the full month of July, as I recollect it.

Q. July 1931?

A. July 1931.

[fol. 118] Q. During the time that Mrs. Bowers was away, did you see Mr. Bowers?

A. Nearly every day; that is every evening, of course.

Q. And you talked with him on those occasions?

A. He came over on the porch and sat with me.

Mr. McCabe: I object to this line of questioning. He has testified over a long period of time that he has seen this man and known him and talked with him every day and this is just repetition.

The Deputy Commissioner: What is the basis for the question?

Mr. Bauman: To show, if the Court please, that Mr. Bowers—his general disposition; the opportunity of this witness to testify as to his general disposition and as to his opportunity to observe his general disposition and to show that he had everything to live for.

The Deputy Commissioner: Is this to establish——

Mr. Bauman (interposing): Rebut the question——

The Deputy Commissioner (interposing): Rebut the question of difficulty between the two?

Mr. Bauman: No; there is no evidence of any difficulty, but to rebut the intimation that there is a claim of suicide.

The Deputy Commissioner: The objection will be overruled.

Mr. McCabe: Let me put my objection formally in the record:

The reason for the objection, Mr. Bauman, is, and Mr. Commissioner, the reason for the objection is that Mr. Bauman has already covered this point as regards the relationship between the witness and the opportunity of observa-

tion over a period of quite a long time prior to this man's death, and this is simply a repetition for the purpose of attempting to strengthen the record.

By Mr. Bauman:

Q. Mr. Shaver, did Mr. Bowers on that occasion, during the period of time that his wife and baby were away, indicate any desire of wanting them back?

A. Nearly every time that we got into conversation about them he would wish they were back; he would say that the time seemed to be awfully long without them.

Mr. Bauman: That is all. You may take the witness.

[fol. 119] Cross-examination.

By Mr. McCabe:

Q. Where do you live, Mr. Shaver?

A. 3623 32nd Street, Mt. Rainer.

Q. Are you in any way related to Mr. Bowers?

A. No.

Q. Or to his wife, Mrs. Bowers?

A. No.

Q. To either him or his wife?

A. No.

Q. Are you related to Mrs. Bowers in any way?

A. No.

Q. Now, how long did you say that you had known Mr. Bowers prior to his death?

A. About four years.

Q. You say that prior to Mr. Bowers' death you had seen Mr. Bowers about every day?

A. Practically every day.

Q. What kind of work are you engaged in?

A. I am in the Interior Department; I am draftsman in the Interior Department.

Q. Draftsman in the Interior Department?

A. Yes.

Q. About what time did you get home or did you usually get home in the evening?

A. I usually got home about five o'clock.

Q. Five o'clock?

A. Yes.

Q. Do you know what time Mr. Bowers got home in the evening?

A. The average, on every day except Saturday some place between seven and eight o'clock.

Q. Between seven and eight?

A. Yes.

Q. Now, were there not plenty or days when you did not see Mr. Bowers at all, except that you glanced out of the window and saw him go in the garage?

A. There would be a few days that we each would see each other that way; but nearly in every case he would call to me or wave as he passed through.

Q. But you would not see him personally and talk to him?

A. Practically, I might say, six days of the week I would have a chance to talk with him; the other day if I did not happen to be near enough to talk to him I would see him through the window of the cellar.

Q. You mean that you would talk to him lots of times, and just say "Hello" just as you say that to a neighbor; that would be the only conversation that ensued; is that right?

A. Once in a while; most of the time he would stop. He seemed to make it a point if he saw a light downstairs he [fol. 120] would come over to the window and talk, or come inside and talk.

Q. Lots of nights you were not in your cellar, though?

A. Not so very many during the summer.

Q. You would go down there in the summer?

A. I practically lived there in the summer time.

Q. Now, did you know Mr. Bowers had been operated on four years prior to this time?

A. I did.

Q. He had had a mastoid operation?

A. That is what I understood.

Q. In your intimate acquaintance with this man, Mr. Bowers, did you know that a couple of weeks prior to the date that his death occurred that he had been having trouble with his head, or headaches from his ear?

A. He never mentioned anything like that to me.

Q. Although you saw him every day?

A. Although I saw him practically every day.

Q. Did he tell you that he might have to go to the hospital for an operation for this condition; another operation?

A. No.

Q. He did not tell you that?

A. No.

Mr. McCabe: That is all.

Mr. Bauman: If the Commissioner will permit me, there was one question that I intended to ask and that I overlooked.

The Deputy Commissioner: Go ahead.

Redirect examination.

By Mr. Bauman:

Q. Mr. Shaver, I think it was on Thursday that Mr. Bowers met his death, September 10th.

Do you recall the Monday previous to the Thursday on which he met his death of anything in particular, something that you and Mrs. Shaver and Mr. and Mrs. Bowers did?

Mr. McCabe: I object to a leading question of that kind. I think that is certainly leading, trying to refresh the recollection.

The Deputy Commissioner: All right, strike out the question and ask it in another way.

[fol. 121] By Mr. Bauman:

Q. Mr. Shaver, were you folks together on the Monday preceding the death of Mr. Bowers?

A. We were.

Q. What were you doing?

A. We were practically together all day, the two of us, Mrs. Bowers and my wife and myself and Mr. Bowers, practically all day, you see; we played tennis.

Q. Who played?

A. Mrs. Bowers and I, myself, and my wife and Mr. Bowers.

Mr. Bauman: That is all.

Mr. McCabe: That is all.

(The witness thereupon was excused and retired from the witness stand.)

Mr. Bauman: May Mr. Shaver be excused?
The Deputy Commissioner: Yes.
Mr. Shaver: I will wait until Mrs. Shaver is ready to go.
Mr. Bauman: She said that she would be here.
Mr. Shaver: She said if possible she would get down.

(At this point, Mrs. Mariella Shaver appeared at the hearing room.)

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Thereupon MRS. MARIELLA SHAVER, being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, having been called as a witness for and on behalf of the Claimant, testified as follows:

Direct examination.

By Mr. Bauman:

Q. State your full name, please.
A. Mariella Shaver.
Q. And your address?
A. 3623 32nd Street, Mt. Ranier, Maryland.
Q. You are the wife of Mr. Charles Shaver?
A. I am, yes, sir.
Q. This gentleman here (indicating Mr. Shaver)?
A. Yes.
Q. Mrs. Shaver, did you know Mr. Bowers in his lifetime?
A. I knew him for four years.
Q. You knew him for four years?
A. Yes, sir.
Q. Did you know Mrs. Bowers?
A. Yes.
[fol. 122] Q. Do you know her?
A. Yes, I do.
Q. About how long have you known her?
A. About four years.
Q. During that period of time or at any other time during that four years did you and Mrs. Bowers and Mr. Bowers visit each other?
A. Yes, very frequently.
Q. About how long a period of time—as I understand it, you lived next door to each other?
A. We lived next door to each other; three or four times a week, sometimes through the summer every evening.

Q. Did you go and sit on their porch and talk with them?

A. Yes, and they were over to our place.

Q. Did you ever enter into any sports or entertainment with them?

A. Well, they had a machine, and we went riding with them.

Q. You used to go riding together?

A. Yes, very often.

Q. Did you ever play games with them?

A. Tennis and croquet out in our back yard.

Q. You have croquet grounds in your back yard?

A. Yes.

Q. Do you remember the occasion of Mr. Bowers' death?

A. Yes, I do.

Q. I believe that was on a Thursday, that was the day of the week?

A. Yes.

Q. Thursday?

A. Yes.

Q. At what period, when was the last time you saw Mr. Bowers alive?

A. Labor Day, Monday; the first Monday in September, and the accident happened on Thursday.

Q. What did you do on Labor Day?

A. All afternoon we played tennis and croquet.

Q. When you say "we" who do you mean?

A. My husband and daughter and Mr. Bowers and Mrs. Bowers.

Q. Your husband and who?

A. My daughter, sixteen years old and Mr. Bowers and Mrs. Bowers.

Q. Mrs. Shaver, from the opportunity you have had to observe Mr. Bowers, what would you say his disposition was?

A. Very happy disposition; he was always smiling.

Q. Did that continue up to what period of time?

A. Up until the afternoon of Labor Day and I never saw him after that.

Q. You never saw him after that?

A. No.

Q. I mean alive?

A. No.

[fol. 123] Q. From your observation of Mr. and Mrs. Bowers, what would you say, Mrs. Shaver: was there anything about their relation or their feeling toward each other?

A. I should say that they were very happy.

Q. Did you know their little boy?

A. I certainly did.

Q. Did you ever see Mr. Bowers around the boy?

A. Yes, indeed.

Q. How often?

A. Why, practically every evening when he returned from his work.

Q. What was his attitude toward the child?

A. Just as fond as any father could be of the little fellow, and the little fellow was crazy about his daddy; he was only two years old.

Mr. Bauman: You may take the witness.

Cross-examination.

By Mr. McCabe:

Q. Mrs. Shaver, about what time would your husband get home in the evenings?

A. My husband?

Q. Yes.

A. Between five and five-thirty.

Q. You had seen Mr. Bowers the last time you say, the last time you had seen him was on Labor Day preceding his death?

A. Yes.

Q. And that was Monday of the week in which his death occurred; his death occurring on Thursday?

A. Yes; but, may I add that the morning of the accident I had not arisen, but I could hear the machine when he came out to pick up a neighbor, I could hear him laugh; I did not see him. I heard him laughing, there.

Q. You recognized the laugh?

A. Yes.

Q. Are you positive that you could recognize that?

A. Oh, yes, I know his laugh.

Q. Between Monday and Thursday were you living steady there at your home?

A. Yes.

Q. You had not been out of town?

A. No.

Q. Was your husband home too?

A. Excepting when he was at work; he was at home every evening.

Q. Every evening?

A. Yes.

Q. About what time did Mr. Bowers get home in the evening, do you know?

A. Between six and seven, I should say; and sometimes [fol. 124] a little later and sometimes a little earlier.

Q. Now, for the two or three weeks preceding Mr. Bowers' death, and you knowing him as intimately as you have related, and being so well acquainted, living next door, did you hear Mr. Bowers make any complaint regarding the condition of his ear, or that he had to be operated on again?

A. Yes, once or twice he made some light remarks that he might have to be operated on.

Q. Did you know or did he ever tell you that he had been having headaches from this ear condition?

A. No, not particularly; once in a while his wife would mention it.

Q. But he did not?

A. No; he never mentioned any trouble about his ear only to say he may, some day, have to be operated on.

Q. Did you know he had any headaches as a result of that ear condition?

A. No, I never heard him say.

Q. Did he ever tell you that the operation performed for the ear condition previously had been unsuccessful?

A. No, he never discussed that with me.

Q. He never discussed it with you?

A. No.

Q. So, as regards his health and his ear, and so forth, you knew very little about that?

A. I knew very little about that other than he did not have much trouble as far as I know.

Q. As far as you know he did not have much trouble; but you did not know whether or not he had any trouble and kept it to himself.

Mr. Bauman: She could not know that; there is no way that she could have of answering the question. She could only answer "as far as she knew".

Mr. McCabe: Wait a minute.

The Witness: I knew he had been to the Doctor's about his ear. I do not know what the doctor said or what he himself thought, because I did not discuss his ear trouble with him.

Mr. Bauman: That is all.

(The witness thereupon was excused and retired from the witness stand.)

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Thereupon ODUS EILAND was called as a witness for and on behalf of the Claimant and, having been previously duly [fol. 125] sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified as follows:

Direct examination.

By Mr. Bauman:

Q. What is your name?

A. Odus Eiland.

Q. And what is your address?

A. 4109 Thirtieth Street, Mt. Rainer, Maryland.

Q. Mr. Eiland, in Mr. Jeff Bowers' lifetime, did you know him?

A. I have known Mr. Jeff Bowers for ten years or more; I do not know exactly how long; at least ten years.

Q. Do you know Mrs. Bowers here?

A. I have known her practically all my life.

Q. Are you related to either one of them?

A. None whatever.

Q. By marriage or otherwise?

A. None whatever.

Q. Did you ever work with Mr. Bowers, or was it your brother?

A. It was not me. I never worked with him regularly; just a day at a time, occasionally.

Q. Have you ever visited Mr. and Mrs. Bowers at their house?

A. Quite frequently.

Q. Do you know where they live?

A. Yes, sir; I cannot give you the exact address but it is on 32nd Street; I do not know the exact address.

Q. Whereabouts?

A. Mt. Rainier, Maryland.

Q. How close is that about to where you live?

A. Three blocks.

Q. About three blocks?

A. Three or four blocks.

Q. How long have you lived at your present address?

A. Since last June.

Q. Since last June?

A. Yes.

Q. 1931?

A. Yes.

Q. Do you know other people who know or who knew Mr. Bowers and Mrs. Bowers?

A. Yes, sir.

Q. Did you have mutual friends?

A. Lots of them.

Q. Are you married?

A. Yes, sir.

Q. Did you and your wife ever visit Mr. and Mrs. Bowers?

A. Yes, sir.

Q. And did they ever visit you and your wife?

A. Yes, sir.

[fol. 126] Q. Did you ever visit other people's houses with Mr. and Mrs. Bowers or have you been there when other people have been there?

A. Yes, sir.

Q. When was the last time that you saw Mr. Bowers in his lifetime; alive I mean?

A. The Sunday previous to his death.

Q. Where was that, Mr Eiland?

A. At Mr. Dunn's home; his brother-in-law.

Q. Mr. Bower's brother-in-law?

A. Yes.

Q. What was the occasion, Mr. Eiland?

A. We were just there and had ice cream that night, and cake.

Q. Was anybody else there besides you and Mrs. Eiland and Mr. and Mrs. Bowers?

A. My brother and Miss Ward was there; a young lady.
Q. Is Mr. Dunn married?
A. Yes.
Q. Mrs. Dunn was there?
A. Yes, sir.
Q. From your observation of Mr. Bowers, what was Mr. Bowers' disposition?
A. Well, to be frank, he was the life of the party; he was cheerful as he could be, and jolly.
Q. During the period that you knew him and particularly for some time just prior to his death, did he appear despondent, depressed?
A. None whatever.
Q. What was the relationship that apparently existed between Mr. and Mrs. Bowers?
A. The relationship seemed to be that they were getting along as well as any couple could; I never knew of any disagreements between the two.
Q. Did you ever see their little boy?
A. Yes, sir.
Q. Would he be around on occasions when you would see Mr. and Mrs. Bowers?
A. Yes.
Q. What was Mr. Bowers' attitude toward his child?
A. He was very fond of his child.

Mr. Bauman: You may take the witness.

Cross-examination.

By Mr. McCabe:

Q. You say that you lived at 4109 Thirtieth Street for about a year?
A. Well, since last June.
Q. Since last June?
A. Yes.
Q. And prior to that, where did you live?
A. I lived on Thirtieth Street; on Twenty-ninth Street, 3910 Twenty-ninth Street.
[fol. 127] Q. In that same neighborhood?
A. Yes, sir.
Q. How long did you live there?
A. From March to June, the same year.
Q. And where did you live prior to that?

A. 3701 Jenifer Street, Washington, D. C.

Q. Now, since last June, taking that as a starting point, how many times do you think that you had seen Mr. Bowers and had any extended visits with him?

A. From one to three or four times a week.

Q. One to three or four times a week?

A. Several times a week; seldom were we not together some place.

Q. At the homes of friends, or something like that?

A. Yes, either my home or his home or the home of his friends.

Q. And you last saw him on Sunday prior to his death?

A. Yes.

Q. And at that time you were out to an evening party and had some ice cream?

A. Yes.

Q. Now, when you saw him at other times, would it be night time you would see him at home with his friends or at his home?

A. Well, unless it was on Sunday he was working other times except night time; on Sunday we were usually together. We were together every Sunday.

Q. You were together every Sunday?

A. Yes, some place.

Q. Some place or other?

A. Yes.

Q. How many times do you think you visited his home since last June?

A. I cannot tell you; quite frequently.

Q. Have you any idea?

A. At least twice a month.

Q. Twice a month?

A. Yes.

Q. And what time of day would that be when you visited the home; would it be at night time?

A. Sometimes during the week; it would be at night and, on Sundays in the day time.

Q. You would see him at night during the week and on Sundays in the day time?

A. Yes, sir.

Q. Did you know that, or had you had any conversation with Mr. Bowers relative to trouble he was experiencing with his ear as a result of the operation he had had?

A. I had not heard Mr. Bowers mention that at all himself. He never talked about that at all or said anything about it to me.

[fol. 128] Q. Do you recall that he ever had headaches as a result of his ear condition?

A. Not in the last year.

Q. Had you known him prior to the last year or that he had had headaches prior to that?

A. I do know that he had an operation over a year ago, and I suppose that was the cause of it; but I do not remember just what the operation was.

By the Deputy Commissioner:

Q. He is asking the question whether you knew he had headaches.

A. He had headaches; he has had them, I am quite sure.

Q. Is that your conclusion or did you hear him say he had headaches?

A. He never told me he had headaches. That, of course, must be my conclusion.

Mr. Bauman: That, of course, will go out.

The Deputy Commissioner: Yes.

By Mr. McCabe:

Q. You do know that he had headaches, but you do not know the cause; that is what you are testifying to?

Mr. Bauman: He could not know. He said the deceased had not told him.

Mr. McCabe: He said he did not know it was caused from his ear condition.

This man is talking about that he knew he had headaches; how did you know he had them?

The Witness: From what he said.

By Mr. McCabe:

Q. From what he said?

A. From what he told me.

Q. From what he told you? What did he tell you and when did he tell you that he had headaches?

A. I cannot tell you the exact time when he said he had headaches.

Q. Just before his death? Did you know he had had headaches just before his death?

A. No, sir, I am sure I don't know.

Q. You don't know that?

A. No, positively I don't.

Q. Did he ever tell you that the previous operation had [fol. 129] not been successful and he would have to be operated on again?

A. No, sir, he did not mention that to me.

Mr. McCabe: That is all.

Mr. Bauman: That is all.

(The witness thereupon was excused and retired from the witness stand.)

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Thereupon DAVID B. EILAND was called as a witness for and on behalf of the claimant and, having been previously duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified as follows:

Direct examination.

By Mr. Bauman:

Q. Mr. Eiland, please state you full name?

A. David B. Eiland.

Q. And what is your address?

A. 4109 30th Street, Mt. Rainier, Maryland.

Q. You live with your brother here?

A. Yes.

Q. This gentleman is your brother (indicating Mr. Odus Eiland)?

A. Yes.

Q. Did you know Mr. Jeff Bowers during his life time?

A. Yes, sir, I did.

Q. And about how long did you know him?

A. I knew him when I seen him, most all of my life, and for the last, well, since he and Mrs. Bowers were married I knew him very well.

Q. Then, I assume you know Mrs. Bowers also?

A. Yes, sir.

Q. And about how long have you known her?

A. Yes; I have been very well acquainted with her ever since I can remember.

Q. Mr. Eiland, are you married?

A. No, sir.

Q. Do you know other people who knew Mr. and Mrs. Bowers?

A. Yes.

Q. Did you ever visit Mr. and Mrs. Bowers?

A. Yes, sir; quite often.

Q. Of course, you have known him then since he has been married to Mrs. Bowers?

A. Yes.

[fol. 130] Q. You have no home of your own?

A. No.

Q. That is an establishment?

A. No.

Q. They never visited you—I mean in an establishment of your own?

A. That is right.

Q. Did they ever visit your brother's house?

A. Yes.

Q. Were you at other people's houses when they were present?

A. Yes, sir.

Q. Did you ever work for Mr. Bowers?

A. Yes indeed.

Q. When was that?

A. That was in 1929 and 1930.

Q. About how long a period of time did you work with Mr. Bowers?

A. Well, I cannot remember the dates; but, something like ten, eight or ten months.

Q. Whereabouts?

A. At 18th and Columbia Road, the People's Hardware Store.

Q. Prior to that—well, let me ask you this: From your observation of Mr. Bowers; well, before I ask you that: Do you recall the last time you saw Mr. Bowers alive?

A. Yes, sir, on Sunday night before he was dead.

Q. Where was that, Mr. Eiland?

A. At Mr. Dunn's house; Mr. Albert Dunn's house.

Q. Were other people there?

A. Yes, several people.
Q. What was the occasion of being there?
A. Well, they had kind of a little party.
Q. Did they have anything to eat?
A. Yes; they did.
Q. What?
A. Ice cream, I remember, and quite a few other little things.
Q. And Mrs. Bowers and Mr. Bowers were both present on that occasion?
A. Yes, sir, they were.
Q. From your observation of Mr. Bowers, Mr. Eiland, what would you say was his disposition?
A. Well, he was a fellow that never worried about anything; he did not seem like——

Mr. McCabe (interposing): I object; that is a conclusion.
The Deputy Commissioner: Yes, that is a conclusion.

By Mr. Bauman:

Q. Answer in respect to whether he was either of a cheerful, happy disposition or melancholy or depressed?
A. Cheerful, always.
[fol. 131] Q. Did that continue up until the last time you saw him alive?
A. It sure did. At Mr. Dunn's that night Mr. Bowers made more fun that anyone else did.

Mr. McCabe: I object to that.

By Mr. Bauman:

Q. Mr. Eiland, from your observation of Mr. and Mrs. Bowers together, what would you say was the apparent relationship between them?
A. Very happy.
Q. Did you know they had a little boy?
A. Yes, sir.
Q. Did you ever see the little boy?
A. Yes, sir, very often.

The Deputy Commissioner: I think you have two or three witnesses on that question already, Mr. Bauman. I don't think you need go farther with that.

Mr. Bauman: I will suspend then. You may take the witness, Mr. McCabe.

Cross-examination.

By Mr. McCabe:

Q. How long, Mr. Eiland—you spell your name I-r-e-l-a-n-d?

A. No; it is E-i-l-a-n-d.

Q. Mr. Eiland, how long have you personally known, or did you personally know Mr. Bowers?

A. Well, you mean to be around him a lot? Is that what you mean?

Q. Yes?

A. For the last four years; that is to be around him every day you might say, almost.

Q. And when did you work with him at 18th Street and Columbia Road, about when?

A. The best I can remember was in the last part of 1929 and the first part of 1930.

Q. Who did you live with, Mr. Eiland?

A. I lived with my brother Odus Eiland.

Q. And where did you work?

A. I worked at 3511 Connecticut Avenue, the People's Hardware Store.

Q. That is where you work now?

A. Yes.

Q. About what time do you get through work?

A. In the evening about 7:30.

Q. 7:30 in the evening?

A. Yes.

Q. And Saturday night, when did you get through?

A. At 10 o'clock.

[fol. 132] Q. 10 o'clock?

A. Yes.

Q. What do you generally do in the evening?

A. Well, most of the time I came home; maybe go down to Mr. Dunn's and look around; if I go out to some other place maybe it is for a ride or a movie.

Q. How often do you see Mr. Dunn?

A. I venture to say at least four times a week.

Q. Mr. Dunn is a brother-in-law of Mr. Bowers?

A. Yes.

Q. And you are a close friend of Mr. Dunn?
A. Yes, sir.

Mr. McCabe: That is all.
Mr. Bauman: That is all.

(The witness thereupon was excused and retired from the witness stand.)

Mr. Bauman: This gentleman may be excused?
The Deputy Commissioner: Yes.

(The witness last above referred to retired from the hearing room.)

Mr. Bauman: I would like to have Mrs. Bowers on the stand again.
The Deputy Commissioner: All right.

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Thereupon Mrs. Bonnie L. Bowers, the claimant herein, was recalled to the witness stand and, she having assumed it, the following occurred:

Mr. McCabe: Is this rebuttal?
Mr. Bauman: Yes, it is rebuttal, but I do not know that there is anything to rebut. I am going into the whole thing.
The Deputy Commissioner: Do not repeat what is already in the record.
Mr. McCabe: Mrs. Bowers has been on the stand and given her direct testimony.
Mr. Bauman: That is correct.
Mr. McCabe: Unless this is rebuttal I object to her testifying.
Mr. Bauman: It is rebuttal.
The Deputy Commissioner: Why not wait until the other side is finished?
[fol. 133] Mr. Bauman: It is one little piece of evidence and it will dispose of our side of the case.
The Deputy Commissioner: Let us hear it.
Mr. McCabe: If it is rebuttal evidence—if it is not rebuttal——
Mr. Bauman (interposing): It is absolutely rebuttal.

The Commissioner examined Mrs. Bowers in rebuttal in reference to her relations.

Q. Mrs. Bowers. have you a letter which your husband wrote to his mother?

A. Yes.

Mr. Bauman: I just want to offer this (exhibiting a paper writing).

Mr. McCabe: I object if he wrote it to his mother.

The Deputy Commissioner: Identify the signature.

By Mr. Bauman:

Q. You of course are familiar with your husband's handwriting?

A. Sure.

Q. Did Mr. Bowers write this letter (indicating the document last referred to)?

A. Yes.

The Deputy Commissioner: What is the date of it? He has not seen it; she says "Yes".

Mr. Bauman: She took it out of her pocketbook.

The Deputy Commissioner: Let her look at the signature on it.

(The witness examined the document in question.)

By the Deputy Commissioner:

Q. Now, can you identify that signature?

A. (After further examination.) Yes.

Q. That is the signature of Mr. Bowers?

A. Yes.

By Mr. Bauman:

Q. Did you see him write it? A. No, I did not see him write it.

By the Deputy Commissioner:

Q. What is the date of it?

A. The date of the letter is September 9, 1931.

[fol. 134] Mr. Bauman: September 9, 1931.

The Deputy Commissioner: Do you want to see that, Mr. McCabe?

Mr. McCabe: Yes; I would like to see it.

(The letter in question was examined by Mr. McCabe.)

By Mr. Bauman:

Q. You received this from Mr. Bowers' mother?

A. Yes, I did.

Q. And it was addressed to his mother?

A. Yes. This is the envelope that he sent it in (indicating a further paper writing).

Q. And has a postmark on it as to when it was mailed?

A. Yes.

Q. Is that Mr. Bowers' handwriting on the envelope?

A. (After examining the envelope.) Yes, it is.

The Deputy Commissioner: Is there some statement in the letter that you want in, or is it just the whole letter?

Mr. Bauman: I think the whole letter.

This was written on the 9th, the night before his death, and mailed on the morning of the occasion of his death; the postmark on the envelope appears to be "Washington, D. C., September 10, 10:30 a. m., 1931". Of course that is when it reached the postoffice.

(The envelope in question was examined by Mr. McCabe at this point.)

Mr. Bauman: I offer this in evidence. Shall I read it or shall it just be copied in the record?

The Deputy Commissioner. Whichever you choose.

Mr. McCabe: I object to this letter being offered in evidence for two reasons: One is that they have not the person to whom the letter was address- and who received it, and the other one is that this letter is postmarked, the postmark on the letter is after this man had died.

The Deputy Commissioner: I think the statement was that he wrote it the day or the night before and mailed it the morning he died. Consequently, it would have to be after his death. What is the date?

Mr. McCabe: September 10, 1931 at 10:30 a. m.

[fol. 135] The Deputy Commissioner: Received whereabouts?

Mr. Bauman: In the Washington Postoffice.

Mr. McCabe: At Washington.

The Deputy Commissioner: Does the mother live in Washington?

Mr. Bauman: No, that is the time it was received at the postoffice.

The Deputy Commissioner: The statement was that it was mailed that morning.

All right, what other objection do you have, Mr. McCabe?

Mr. McCabe: That the person who received that letter is not here to identify it as having received it.

Mr. Bauman: The witness testified that she received it, the mother.

Mr. McCabe: Where does she live?

A. Goshen, Alabama.

By the Deputy Commissioner:

Q. Goshen, Alabama?

A. Yes.

Q. Is that where it is addressed to?

Mr. Bauman: Yes.

The Deputy Commissioner: And is the letter addressed to his mother?

Mr. Bauman: Yes, sir, in Mr. Bowers' handwriting, according to Mrs. Bowers.

If you want to take Mrs. Bowers' deposition in Alabama we will be pleased to take it down there. She cannot get here.

Mr. McCabe: As a matter of fact, I will be willing to introduce the letter. I withdraw the objection.

The Deputy Commissioner: Let it be copied into the record as a claimant's exhibit.

(The letter in question was thereupon received in evidence and, is incorporated herein as follows:)

EXHIBIT IN EVIDENCE

"Wednesday night, Sept. 9th, 1931.

"DEAR MOTHER:

Will try and answer your letter received before you left Mich. Guess you thought I wasn't going to answer, but I haven't been feeling so good. Sure hope these few lines [fol. 136] will find you well. This leaves us very well. How did you make your trip back home? Fine, I hope. How are all the rest of family? By now, fine, though, I guess. Sure was glad to hear Annie, Jim and Jessie's baby was almost well. Hope he will continue to improve. Albert is fine and mean as ever and his eyes swell up but is better now. How

are times down there? Well, though, I guess. Sure hope you enjoy your trip to Mich. Was very sorry I didn't get to go up there while you was there. I didn't see hardly how we could drive over those mountains. Sure got me last year when we went to Akron. Guess you feel better since you got back home. How did you like Dan? You wrote and asked me what I thought of them. I think they both are nice men. I like them both. Dan looks like a kid to me. Well, I close for this time. Excuse me for not writing sooner. Won't wait so long next time. Answer soon in long letter. May God bless you, from

JEFF, BONNIE, ALBERT."

(The envelope in question was addressed as follows:

"From 3619 32nd Street, Mt. Rainier, Maryland; Mrs. A. L. Bowers, Goshen, Alabama, R. F. D. No. 1", and was postmarked: "Washington, D. C., 2; Sep. 10, 1931, 10:30 a. m.")

Mr. Bauman: Mrs. Bowers would like to have the original of that letter and the envelope back, if that can be arranged with the Commissioner.

The Deputy Commissioner. Yes; that will be all right. The Reporter can take it and copy it in the record and then see that it is returned to Mrs. Bowers.

The Reporter: I will return the original letter and the envelope to Mr. Bauman and he in turn can deliver it to Mrs. Bowers.

Mr. Bauman: That will be all right.

(The witness thereupon was excused and retired from the witness stand.)

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Thereupon Police Lieutenant JOHN H. FOWLER was called as a witness for and on behalf of the respondent and, having been previously duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified, as follows:

[fol. 137] Direct examination.

By Mr. McCabe:

Q. Lieutenant, please state your full name?

A. John H. Fowler.

Q. And what is your address?

A. 611 Roxboro Place, Northwest.

Q. You are the ballistic expert of the Police Department?

A. Yes, sir.

Q. Did you have occasion to examine a gun turned over to you by Officer Truscott, around about the 10th of September, 1931?

A. I did. I might say that I have no records of this case with me this morning for the reason that our building is closed and no one is permitted to go in.

By the Deputy Commissioner:

Q. Did you give testimony at the Coroner's Inquest?

Mr. McCabe: Yes, he did.

By the Deputy Commissioner:

Q. Did you?

A. I did.

The Deputy Commissioner: And you have a copy of that testimony?

Mr. McCabe: Yes, sir; if he wants it to refresh his recollection the testimony is here.

The Deputy Commissioner: All right.

By Mr. McCabe:

Q. Was this the gun which was found at the time Jeff Bowers was killed on the 10th of September, 1931?

A. A gun was brought in by one of the officers that was investigating the case.

Q. Officer Truscott?

A. Yes, sir.

Q. What did your examination disclose, Officer?

A. A test shot was fired from the gun that was brought in by Officer Truscott and a comparison made with the bullet that was brought in by one of the officers—I do not know which one it was; but it was supposed to have been taken from the body of the deceased—what is his name?

The Deputy Commissioner: Bowers?

The Witness: Bowers.

[fol. 138] By Mr. McCabe:

Q. Jeff Bowers?

A. Yes; and my findings were that this bullet was fired through——

By the Deputy Commissioner:

Q. (Interposing.) Are you testifying from memory?

A. Yes.

Q. Do you know that the bullet was taken from the body of the deceased, that it was the one—or let me ask it this way: Do you know that the bullet was taken from the body of the deceased, found in some other place, or what?

A. I do not know the exact history of the bulet. I know it was brought in and supposed to be the bullet that killed Jeff Bowers.

Q. I see.

By Mr. McCabe:

Q. Well, now, after you made this test by firing, what was your conclusion as to the bullet that was brought in, and the gun?

A. That the bullet that was brought in was fired through the same gun that was brought in and also a shell was brought in.

Q. Now, at the time the gun was brought in, did you have any evidence——

The Deputy Commissioner (interposing): Mr. Bauman, are you denying that he was killed by a gun?

Mr. Bauman: No.

The Deputy Commissioner: Do you admit that he was killed by a bullet from his own gun?

Mr. Bauman: Well, yes, sir.

The Deputy Commissioner: Then there is no need of going into that farther.

(Thereupon the witness was excused and retired from the witness stand.)

Thereupon JOHN C. DALGLISH was called as a witness for and on behalf of the respondent and, having been previously duly sworn by the Deputy Commissioner, as is above indicated, assumed the witness stand and, upon examination, testified as follows:

[fol. 139] Direct examination.

By Mr. McCabe:

Q. State your full name?
A. John C. Dalglish.
Q. What is your address?
A. 4022 14th Street, Northwest.
Q. You are a Detective Sergeant, Mr. Dalglish?
A. Yes, sir.
Q. What particular Squad are you connected with?
A. The Homicide Squad.
Q. On September 10th, 1931, were you attached to the Homicide Squad?
A. Yes, sir.
Q. Did you have occasion to investigate the death of Jeff Bowers?
A. I did.
Q. Did you go to the scene of the accident?
A. Yes, sir.
Q. Do you know about what time you arrived?
A. I cannot state the exact time, no, sir.
Q. Was it close to the time that his body was found or shortly after?
A. Shortly after. We made a trip first to the hospital and from there we went to the scene of the accident.
Q. Had you received a report that he had been shot?
A. Yes, sir.
Q. And how did you receive that?
A. From Detective Sergeant Springman, now deceased; he told me to go to the Casualty Hospital, that a man had been shot at a hardware store on 7th Street, Northwest.
Q. When you got there, describe your investigation?
A. When I got there several people were in there, newspaper reporters, policemen, and one or two others.

The store seemed to be in perfect order. The body of course had been removed.

We first started looking for a weapon and could not find anything at all. I was searching around through various things, around the store there, where a weapon might have been kept.

While searching, I heard some one say something about a pistol and I believe I said at that time: "Keep your hands off of it," and I walked around back of the counter

and there laid a pistol in this drawer, with the muzzle pointing to the back.

Q. Was it a pistol or a revolver?

A. A pistol, if I am not mistaken.

[fol. 140] Q. How many shells did it have in it?

A. I think there were about six; I do not want to be positive of that. I did not thoroughly examine the gun.

By Mr. Bauman:

Q. You did not?

A. No.

By the Deputy Commissioner:

Q. Describe, if you remember, what you found?

A. I think it was about a 32, if I am not mistaken; as I say I did not make any minute examination of that pistol.

By Mr. McCabe:

Q. Where was it located?

A. It was lying in a drawer behind a leather holster, with the muzzle pointing to the back and out of the holster; of course there was two drops of blood in the drawer, one on top of the gun, two in the immediate rear of the counter and one about at the corner of the counter, back.

Q. Did you have described to you what the position of the body was where it was found?

A. Yes, sir.

Q. And was any blood at the end of the counter, was that where the body was found?

A. Yes, sir; I believe the body had got about, was found about three feet from this last drop of blood. It was found more around the rear end of the counter, the rear of the store, to the end of the counter.

Q. That is where the cash register was?

A. Yes, sir.

Q. And a further search disclosed what?

A. A further search disclosed, we located a can on the third shelf, a paint can; that can was taken from the shelf and taken to the rear of the store and opened.

Some of the liquid was poured off and I put my hand into the thicker ingredients and found a bullet. That was turned over to Lieutenant Fowler as was the gun also. In

fact I think the gun was turned over by a man, one of our photographers, named Engert.

Q. Did you smell of the gun to see if it had recently been discharged?

A. It had been.

Q. Did you smell of it to determine that?

A. Yes, sir.

Q. At the time you came there did you see any evidence around the counter as if anyone had been cleaning a gun? [fol. 141] A. No, sir; the counter right at this drawer was in order; what I mean by that is there were several display cards at the counter and nothing had been disturbed; there was one display card on the top of the cash register and that had not been disturbed.

Q. Now, did you find any evidence of a ramrod?

Mr. Bauman: I think you ought to ask what he did find.

The Deputy Commissioner: He already asked if he found any evidence of the cleaning of a gun. Now he is asking about an instrument.

By Mr. McCabe:

Q. A ramrod or oily cloth?

A. No, sir.

Q. No evidence at all?

A. No, sir.

Q. Now, this hole in this paint can, Officer, how far up from the floor was that, do you estimate?

A. I should say close to five feet; it might have been a trifle less.

Q. Where was it in relation to this drawer?

A. Right in back of it.

Q. Did this bullet come into this or go into this paint can straight in, as you observed it?

A. It struck the side.

Q. It struck the side?

A. I believe it struck another can first and then got into this can. The hole in the other can was, rather slightly to the right.

Q. As if it shaded off?

A. Yes.

Q. Now, the first mark on the can you had seen, was that on an angle or straight?

A. About straight.
Q. Straight?
A. Yes, sir.

Mr. McCabe: That is all.
Mr. Bauman: That is all; no questions.

Examination in chief.

By the Deputy Commissioner:

Q. Did you examine the body?
A. No, sir; just looked at it while laying on a bed there in the hospital.
Q. You do not know where the wound was?
A. In the left chest.

By Mr. Bauman:

Q. You examined it?
A. I saw the hole.

[fol. 142] By the Deputy Commissioner:

Q. How near would it be in line where the ball apparently went through the chest, of a man standing, of where you found it struck?
A. Repeat that?
Q. How near would it be on the line from where you found the ball in a man of his height?
A. Almost a direct line.
Q. Almost a direct line?
A. Yes.
Q. It would not go in on an angle and strike down much lower or higher?
A. If there was any angle there, it would be a very small one, either up or down.
Q. It would be almost level?
A. Yes.

By Mr. Bauman:

Q. Then I will ask you this question: You saw the body of Mr. Bowers?
A. Yes.
Q. What would you say was his height?

A. I should say the man looked to me about 5 feet 11 inches laying in bed, from there to 5 feet 8 inches.

Mr. Bauman: That is all.

(The witness thereupon was excused and retired from the witness stand.)

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Mr. Bauman: In order to facilitate matters, I have no objection to admitting that if the witness, John B. Monroe, were here, he would testify to what he did before the Coroner's Inquest taken at the District of Columbia Morgue on Friday, September 11, 1931, in regard to the Inquest over the body of Jeff Bowers.

The Deputy Commissioner: Do you want the whole thing made a part of the record, gentlemen?

Mr. Bauman: I have no contention as to that; it is all the same to me.

Mr. McCabe: I want the whole part of his testimony in, and that would be from Page 9 to the top of Page 15 of the transcript of record of the Coroner's Inquest in that case.

The Deputy Commissioner: Then, that will be admitted. It will be spread upon the record of this hearing.

(The record of the hearing before the Coroner in the above-entitled matter, pursuant to instructions as above indicated, is included herein as follows:)

[fol. 143] "Whereupon JOHN B. MONROE was called as a witness and, having been first duly sworn, testified as follows:

By Deputy Coroner MacDonald:

Q. Your full name, Officer?
A. John B. Monroe.
Q. You are attached to the 2nd Precinct?
A. I am.
Q. Did you have occasion to investigate the death of one Jeff Bowers yesterday morning?
A. I had occasion to report.
Q. Where were you?

A. I was assigned to the Radio Car.
Q. And you got a call to go to this place?
A. We got a call to go to 1311 7th Street.
Q. When you arrived there, was the body still there?
A. It was.
Q. Where did you find this body?
A. It was in the rear of the store, laying face down, beside the cash register, approximately at the end of the counter.
Q. That is in part of the main store building, is it not?
A. It is.
Q. It is not in an ante-room in the back?
A. No.
Q. There is a counter that goes all around the inside of this store?
A. It extends from the front to the rear.
Q. Does it extend across the rear of the store?
A. No, sir.
Q. Just from front to rear?
A. Yes, sir.
Q. And he was behind the counter?
A. No, sir.
Q. Where was he?
A. He was approximately at the end of the counter, not very far removed from it. The cash register sets there.
Q. Lying face down?
A. Yes.
Q. How far from the cash register was he?
A. The cash register is above him, and not over a foot to the side of him. He was not over a foot from the counter.
Q. You say it was about a foot to the side of him?
A. Yes.
Q. What part of his body do you mean, his feet or his head?
A. Just about his head.
Q. The middle of his body?
A. Part of his arm.

Mr. Collins: We have a photograph here, Doctor, I believe.

[fol. 144] Deputy Coroner MacDonald: Mrs. Mobley, you gave your name to me as a witness. Will you kindly step out in the other room please?

Mr. Collins: We do not appear to have the type of photograph I had in mind. It does not show the relation of the counter with the rest of the store.

By Deputy Coroner MacDonald:

Q. You found this body lying near the end of this counter, within a foot of the cash register?

A. Yes, sir.

Q. What else did you notice?

A. I noticed he was bleeding from the back. He was lying face down. All I could see was blood coming from the rear. He could not talk. He made some spasmodic motions.

Q. Did you make any note of the actual time of your arrival there?

A. Yes, sir.

Q. What time was it?

A. 10:22 a. m.

Q. Now go ahead.

A. All that we did was—the men there in the store said they called the ambulance, but I didn't want to trust anyone to leave the place, so I sent the other officer, and he called one, to make certain he would get one there, and also called Headquarters, and the Casualty ambulance came to take him over to the hospital.

Q. Did you make any further investigation around there?

A. No, sir. I questioned the two men that were there at the time, and asked whether or not——

Q. What are the names of those men?

A. John Hoffman and George Kelley.

Q. Did you notice the condition of this cash register?

A. Yes, sir.

Q. What did you see there?

A. I noticed the last thing marked up was a 45-cent sale, and it had apparently been untampered with, so far as I could see.

Mr. Collins: Talk a little louder, Officer.

The Witness: The manager came in later, and he said there was not anything missing from the cash register.

By Deputy Coroner MacDonald:

Q. With respect to the cash register, was it closed or open?

A. It was closed.

Q. Did you notice any blood on the cash register?

A. No, sir.

[fol. 145] Q. The only blood you saw was on this man's back?

A. On this man's back, and some on the floor.

Q. Underneath where he was lying?

A. Like it had come off his shirt, you know.

Deputy Coroner MacDonald: Any other questions? (No response.) Mr. Collins?

By Mr Collins:

Q. Did you find any evidence of a trail of blood?

A. No, sir.

Q. The only blood you saw was on him, and right beneath him on the floor?

A. Yes.

Q. Is that right?

A. Yes.

Q. Did you examine to the rear of the counter?

A. No, sir. I had my hands full there keeping people from coming in the store and disturbing him.

Q. Did you make any search for a gun?

A. No, sir.

Q. Did you stay there until the body was removed in the ambulance?

A. Yes, sir.

Q. Who else came there while you were there?

A. Officer Cole from my precinct. He went with the ambulance to the hospital.

Q. Anybody else?

A. Detective Sergeants came there after I had gone.

Q. They didn't come before you left?

A. No, sir. The Detective Bureau car came up there, but I really don't know who was in it. I didn't recognize either one of them.

Q. So, you did not notice any gun before you left?

A. No, sir. I didn't search for it.

Q. He was stretched out this way (indicating) on the floor?

A. No; he was lying on his hands, had his hands kind of doubled up.

Q. How about his body? Was he on his side or lying flat?

A. Lying flat.

Q. Lying flat?

A. Nearly so. He was a little twisted, but he was still lying on his stomach and chest. I did not move him in any way at all.

Q. He uttered no word while you were there?

A. He uttered no word. I tried to see if he could talk, but all he could do was make moaning sounds. He could not make any statement at all.

[fol. 146] Q. When you left, were the other members of the Police Department there?

A. Yes, sir.

Q. From headquarters?

A. I believe they were, with the Radio Car.

Mr. Collins: That is all.

By Deputy Coroner MacDonald:

Q. In answer to one of my questions, you said you arrived at 10:22?

A. Yes.

Q. In making out this report, you stated the shooting took place at 10:15?

A. Yes.

Q. How did you arrive at that time?

A. We received a call through the radio at 10:20.. We was not very far from there, and it just took us two minutes to get there.

Q. No; but I am talking about——

A. You mean about the 10:15?

Q. Yes.

A. From the statement of Mr. Hoffman.

By Mr. Collins:

Q. Who was it that called the police originally?

A. There seems to be some confusion. Hoffman says he did not, and he says he asked somebody else to on the outside.

Mr. Collins: That is all."

Mr. McCabe: I would like to submit a brief.

The Deputy Commissioner: How many days would you like to have?

Mr. McCabe: By Wednesday.

The Deputy Commissioner: Submit a copy to counsel.

Mr. Bauman: And may I have a brief time in which to submit a reply?

The Deputy Commissioner: Yes; submit it on letter size paper.

Mr. McCabe's brief will be in by Wednesday.

Mr. Bauman: I would like to have until Monday to reply.

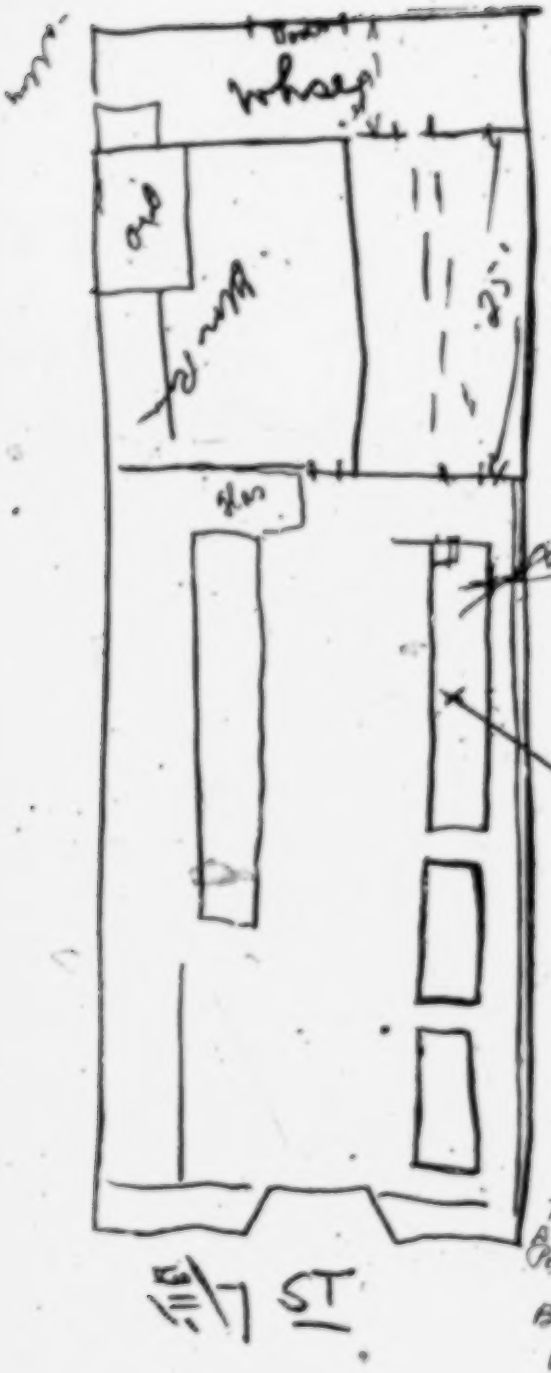
The Deputy Commissioner: Monday, the 8th.

(Thereupon the instant hearing was concluded.)

I hereby certify that the foregoing is a complete and accurate transcript of my shorthand report of the testimony and statements, etc., presented at the described hearing.

H. S. Middlemiss, Official Reporter.

(Here follow two drawings, side folios 147 and 148.)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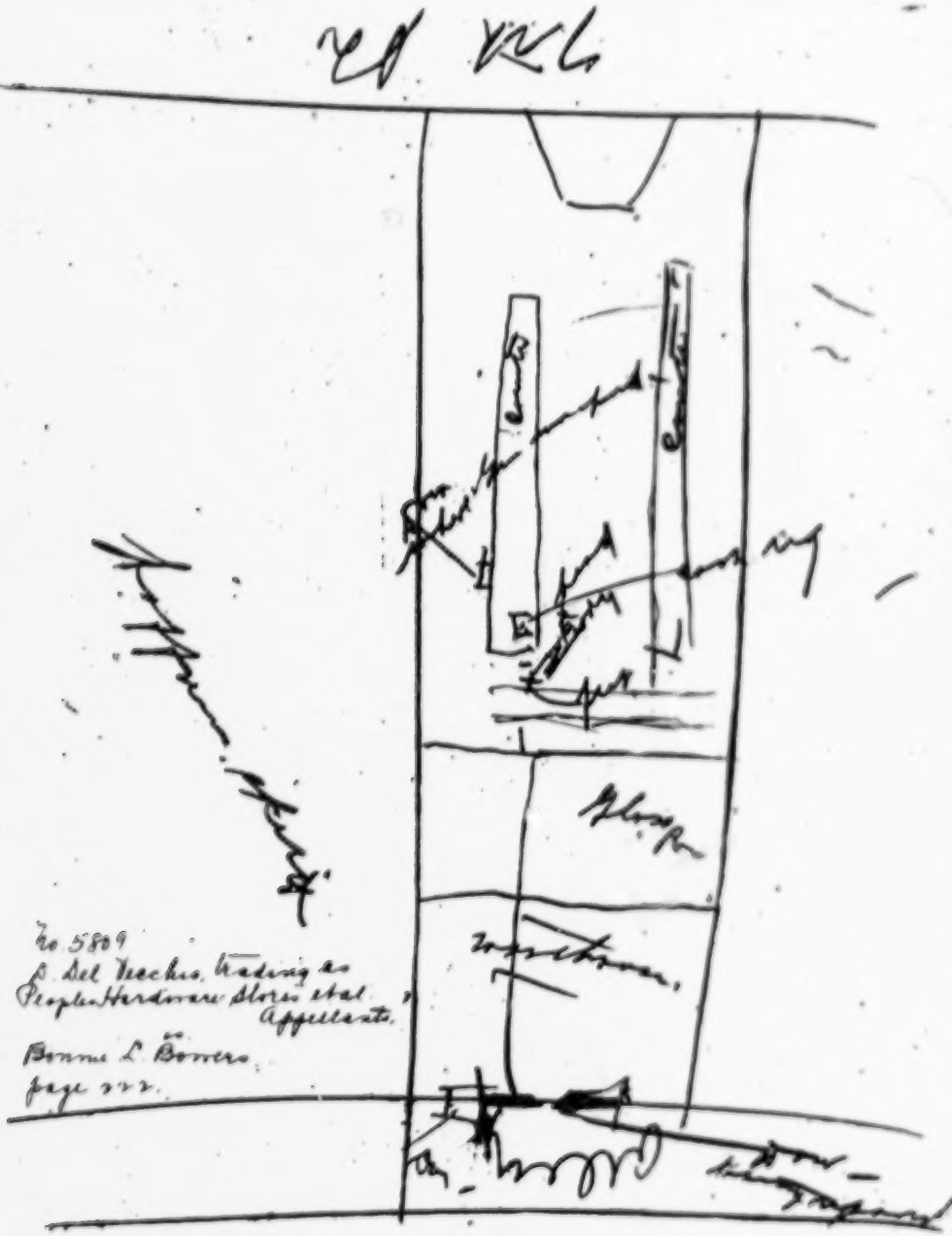
No 5809
P. Del Vecchio, trading as
People's Hardware Store et al
Appellants.
Bonnie L. Bowers
page 222.

[fol. 149] IN SUPREME COURT OF DISTRICT OF COLUMBIA

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS BILL—Filed April 12, 1934

* * * * * * *

Defendants contend that plaintiff's Bill of Complaint should be dismissed because (1) the Deputy Commissioner's conclusion that Jeff Bowers committed suicide is supported by competent evidence, and (2) the compensation order, rejection of claim, embodied the facts upon which he based his conclusion.

It is conceded, as contended by defendants, that, as a general rule, the Findings of Fact by the Deputy Commissioner in compensation cases are conclusive upon the Court, when based upon competent evidence, but the words "competent evidence", when used in connection with an issue of suicide have a narrower and more restricted meaning. Competent evidence of suicide is defined by the Act as "substantial evidence". What would be competent evidence on any other issue of fact is not necessarily competent evidence, in its narrower meaning, on an issue of suicide.

Our Court of Appeals has, on various occasions, used the terms "competent evidence" and "substantial evidence" interchangeably. In most of the cases, however, the Court has held that the Deputy Commissioner's Findings of Fact will not be disturbed when supported by "substantial evidence".

New Amsterdam Casualty Co. vs. Robert J. Hoage, et al., 60 App. D. C. 40; 59 W. L. R. 91;
Hoage, et al. vs. Murch Bros. Construction Co., 60 App. D. C. 218; 59 W. L. R. 552;
Lumbermen's Mutual Casualty Co. vs. Hoage, et al., 61 App. D. C. 171; 60 W. L. R. 491;
New Amsterdam Casualty Co. vs. Hoage, 61 App. D. C. 306; 60 W. L. R. 869;
Harris, etc., et al. vs. Hoage, — App. D. C. —; 61 W. L. R. 615;
Powell vs. Hoage, 61 App. D. C. 99; 60 W. L. R. 349.

[fol. 150] In the case of Powell vs. Hoage, supra, the Court of Appeals at page 100 said:

"We, therefore, reach the conclusion that the cases in which we may set aside an Order of the Commissioner as 'not in accordance with law', are only those in which is appears that there is an error of law, or in which the Order of the Commissioner is not supported by substantial evidence, as well, of course, in those in which it is arbitrary and unreasonable. If the finding, however, is supported by substantial evidence, it is final."

In the case of Harris, etc., et al. vs. Hoage, supra, the Court of Appeals at page 616 of Vol. 61 W. L. R. (not yet reported in D. C. App.), said:

"We are of the opinion that the aforegoing testimony constitutes substantial evidence in support of the finding of the Deputy Commissioner; that the deceased employee's mother and step father were partially dependent upon him for support at the time of his injury, and his finding, therefore, is binding upon us."

In the case of Hoage, et al. vs. Murch Bros. Construction Co., supra, the Court of Appeals at page 219 said:

"We think that the Findings of Fact of the Deputy Commissioner were supported by substantial evidence, and that, in such circumstances, such findings cannot be disturbed by this Court. Wheeling v. McManigol (C. C. A.), 41 F. (2d) 593."

There are no cases in the Court of Appeals sustaining the statement in defendants' memorandum of Points and Authorities to the effect that the Findings of Fact of the Deputy Commissioner upon matters relative to claims arising under the Compensation Act in force in the District of Columbia, are final and conclusive where supported by any evidence.

In the case of Fidelity and Casualty Company of New York, intervener, et al. vs. Burris, 61 Appeals D. C. 228, the Court at page 229 said:

"It is first insisted that both the lower Court and ourselves are bound by the Findings of Fact of the Deputy Commissioner, but it is sufficient to say as to this that we have many times held that, upon a review of the record made before the Deputy Commissioner, our duty is to de-
[fol. 151] termine whether his Order was or was not in

accordance with law, and this depends upon whether the testimony taken before the Deputy Commissioner will sustain his findings."

But there can be no question that on the issue of suicide, there must be "substantial evidence" to overcome the presumption given by the Act.

Section 20 of the "Longshoremen's and Harbor Workers' Compensation Act", approved March 4th, 1927, (U. S. C. Sup. II, T. 33 Ch. 18) made applicable in the District of Columbia by the Act of May 17th, 1928, (D. C. Code T. 19 Sections 11, 12), provides that:

"In any proceedings for the enforcement of a claim for compensation under this Act, it shall be presumed, in the absence of substantial evidence to the contrary,

(a) That the claim comes within the provision of this Act.

* * * * * * *

(d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another."

The Deputy Commissioner in this case totally failed to make a Finding of Fact on the question of suicide, and the Court of Appeals in the case of The Liberty Mutual Insurance Company vs. Robert J. Hoage, et al., reported in 61 W. L. R. 565 (not yet reported in D. C. App.), held that where the Findings of the Deputy Commissioner failed to state facts to support his conclusion, it is the duty of the Court to determine from the record whether the evidence given before him will sustain his findings.

The undisputed testimony showed that the deceased's place of employment was in a rough, dangerous neighborhood, predominantly colored, where fights and robberies were frequent; that there had been an attempted breaking [fol. 152] into the employer's warehouse, which was immediately back of the store, the night preceding Bowers' death; that Bowers' condition of health was good; that he never lost time from work, except in 1928, when he was operated on; deceased and his wife were loving and affectionate towards each other, and always got along all right together; deceased was very fond of their child; that at

the time of his death, Bowers was not in debt, with the exception of a small Doctor's bill, and a small balance owing on an automobile which he was purchasing on the installment plan, and had more than enough money in bank to cover both of these; that his rent was paid and his accounts with his employer were in good order. Numerous witnesses testified as to Mr. Bowers' cheerful, jolly and happy nature; that he never seemed despondent, melancholy or depressed; and that his cheerful disposition continued right up to the morning of his death. The witness, John W. Shaver saw him the night before his death, at which time deceased promised to bring the witness something home from the store the next day. Mrs. Mariella Shaver, wife of John W. Shaver, testified to playing tennis and croquet with Mr. and Mrs. Bowers on the Monday preceding the Thursday on which he met his death, and to an intimate acquaintance with the deceased for over a year preceding his death; that Mr. and Mrs. Bowers always appeared happy, and that Mr. Bowers was as fond of his child as any father could be; Mrs. Shaver testified that she heard Mr. Bowers laughing when he went for his car in the garage on the morning of his death; that deceased had written his mother, who lived in Goshen, Alabama, a natural normal letter on the night preceding his death, and had mailed it on the morning of his death. The letter gave no intimation whatever of an intention to commit suicide.

Mrs. Thomas Paul Mobley, a witness for the defendants, testified that she called at the store the morning Mr. [fol. 153] Bowers was shot, to make a purchase; that she had previously known Mr. Bowers and had discussed things with him; that she used to go to the store frequently; that Mr. Bowers never discussed ever having had any trouble with his wife, and in answer to the question propounded by counsel for defendants, "Did he ever tell you that his married life was unhappy?", she replied, "No, sir, he never did discuss it; he always seemed to be a fellow who enjoyed life, more like he had everything to live for". This statement by Mrs. Mobley, defendants' own witness, summarizes Mr. Bowers' outlook on life better than any words which we might use.

There was no eye witness to the shooting; nor were any circumstances shown justifying an inference of suicide. There was no evidence of any motive on the part of the

deceased to commit suicide, but on the other hand, all of the evidence tended to refute such a theory. The usual causes for suicide, such as domestic or financial difficulties, despondency, or extreme ill health, were all lacking. All of the evidence adduced proved that no such cause existed. The only testimony adduced by the defendants on the question of suicide was evidence tending to prove that the deceased had undergone a mastoid operation some two years previous to his death, and that about a month previous to his death he had again consulted a physician relative to this ear trouble. Dr. Smart, defendants' witness, testified that the deceased did not appear particularly alarmed about his ear, and that from his experience in such cases, quite often there is no pain at all; that deceased did not impress him as being very much depressed about his condition; that he could not say that deceased impressed him as being at all depressed.

And the further testimony of several members of the Police Department and the coroner of the District of Columbia, consisting of circumstantial evidence, tending to prove the direction which the bullet took, and that the gun [fol. 154] was discharged at close range. All of which evidence was as consistent with the theory of accident as that of suicide.

(NOTE.—Plaintiff was not in a position to purchase a copy of the transcript of the testimony taken before the Deputy Commissioner, and for this reason her counsel does not give the pages of the record containing the foregoing testimony, but if the Court so desires, counsel will furnish a copy of the record as used in the Court of Appeals, and referring to the pages of that record. The Court's attention is further called to the fact that the defendants in their memorandum of points and authorities do not point out any testimony to sustain the Deputy Commissioner's conclusions.)

The provisions of the Workmen's Compensation Act should be liberally construed so as to effectuate its purpose. Any doubt respecting the right to compensation under the Act, should be resolved in favor of the employee or his dependents, as the case may be.

The Fidelity and Casualty Co. of New York, et al., vs. Burris, 61 Appeals D. C. 228;

Rowlette vs. Rothstein Dental Laboratories, Inc., 61 Appeals D. C. 373;
Baltimore and Philadelphia Steamboat Company, et al., vs. Augustus P. Norton, D. C. et al., 284 U. S. 408;
Liberty Mutual Insurance Co. vs. Robert J. Hoage, et al., — Appeals D. C. —; 61 W. L. R. 565;
Standard Accident Insurance Company vs. Robert J. Hoage, et al., — Appeals D. C. —; 61 W. L. R. 613;
President and Directors of the Georgetown College vs. Lillie M. Stone, et al., 61 Appeals D. C. 200.

"It should be remembered that the Workmen's Compensation statutes are remedial in character, and should receive a liberal interpretation in favor of the injured employee."

The President and Directors of the Georgetown College vs. Lillie M. Stone, et al., supra, p. 202.

"The underlying purpose of all compensation laws is to provide money indemnity in case of injury where there is no assignable fault. Accidents in industry are inevitable, and the enactment of compensation laws grew out of a general recognition of a duty owing by society to an injured employee to secure him protection, and this the act seeks to accomplish through the means of insurance built up by premiums paid by employers. Where there is doubt, it should be resolved in favor of the injured employee or his dependent family."

[fol. 155] The Fidelity and Casualty Company of New York, et al., vs. Emma Burris, supra, P. 230.

"The object as we have seen, is to protect society from pauperism by preserving the home and the family and to perform a duty for which governments are formed."

Rowlette vs. Rothstein Dental Laboratories, Inc., supra, p. 375.

And in the case of Standard Accident Insurance Company vs. Hoage, et al., supra, the Court at page 615 of Vol. 61 W. L. R. said:

"The comprehensive language employed in the foregoing Act, distinguishes it from many of the compensation enactments in force in the several states, and gives evidence of

the purpose of Congress that the law in the District of Columbia in compensation cases shall be broadly construed and applied."

In referenec to the defendants' claim that the Deputy Commissioner's award does find the facts on the question of suicide in accordance with law, the mandate of the Court of Appeals, and the decree of the Supreme Court of the District of Columbia, we deem it sufficient to refer this Honorable Court to the language of the compensation order.

In Conclusion

In view of the foregoing state of the law in this jurisdiction, it is respectfully submitted that there was not even "competent evidence" to support the Deputy Compensation Commissioner's conclusion of suicide, much less "substantial evidence" to overcome the strong presumption against suicide afforded by Section 20 of the Compensation Act.

Chapin B. Bauman, Attorney for Plaintiff.

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[fol. 156] In Supreme Court of District of Columbia

Memorandum of Court—Filed April 27, 1934

* * * * * * *

The Court of Appeals in its opinion in this case referring to the issue of suicide uses this language: "If we should decide the question for him (The Deputy Commissioner), we would be passing on a controverted question of fact, as to which there is contradictory evidence in the record." This would indicate that in the opinion of that court there is substantial evidence in the record upon which the Deputy Commissioner might find that the decedent killed himself.

It results therefore that the motion to dismiss should be sustained.

Bailey, J.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

FINAL DECREE DISMISSING BILL OF COMPLAINT—Filed June 27, 1934

* * * * * * * *

This cause came on for hearing upon the motion of the defendants to dismiss the plaintiff's bill of complaint, and upon consideration thereof, it is by the Court this 27th day of June, 1934,

Adjudged, ordered and decreed that said motion be and the same is hereby sustained, and the said bill of complaint be an the same is hereby dismissed.

Jennings Bailey, Justice.

O. K. as to form.

Chapin B. Bauman, Atty. for Plaintiff.

NOTE OF APPEAL

From the foregoing final decree the plaintiff, through her counsel, in open court notes an appeal to the Court of [fol. 157] Appeals; whereupon an undertaking for costs on appeal was fixed at One Hundred Dollars ($100.00) with the privilege on the part of the plaintiff to deposit the sum of Fifty Dollars ($50.00) cash with the Clerk in lieu thereof.

Jennings Bailey, Justice.

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IN SUPREME COURT OF DISTRICT OF COLUMBIA

STIPULATION RE STENOGRAPHIC RECORD—Filed July 13, 1934

* * * * * * * *

It is hereby stipulated and agreed by and between the parties hereto

1. That the stenographic record of the testimony taken at the compensation hearing held before the defendant Robert J. Hoage, Deputy Commissioner, United States Employees' Compensation Commission, Case No. 1960-6, on January 22nd and 29th, 1932, entitled Mrs. Bonnie L. Bowers, claimant, vs. D. Del Vecchio, trading as Peoples'

Hardware Stores, employer, and Merchants' Mutual Casualty Company, insurance carrier, is hereby made a part of the record on appeal in this cause.

2. That said stenographic record was taken and considered by the court in connection with the Bill of Complaint and the Motion to Dismiss the same filed by defendants.

3. That said stenographic record is the same record as is set forth in the Transcript of Record in Case No. 5809 in the United States Court of Appeals for the District of Columbia, entitled D. Del Vecchio et al. vs. Bonnie L. Bowers.

4. That after the opinion and judgment of said Court of Appeals in said cause No. 5809, on November 13, 1933, said Robert J. Hoage heard no other witnesses and took no further testimony, but based his finding of fact solely [fol. 158] on the testimony as it appears in said stenographic record.

James E. McCabe, Attorney for Defendants D. Del Vecchio, Trading as Peoples Hardware Stores, and Merchants Casualty Co., Insurance Carrier. John J. Wilson, Assistant U. S. Attorney, for Defendant Hoage. Chapin B. Bauman, Attorney for Plaintiff.

---

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER FOR APPEAL IN FORMA PAUPERIS—Filed July 13, 1934

* * * * * * *

Upon consideration of the petition of Bonnie L. Bowers, plaintiff herein, to prosecute an appeal in forma pauperis, it is by the Court this 13" day of July, 1934,

Ordered and decreed, that Bonnie L. Bowers prosecute the appeal herein without prepayment of costs and without giving an undertaking to secure the same.

O. R. Luhring, Justice.

In Supreme Court of District of Columbia

Assignments of Error—Filed July 13, 1934

* * * * * * *

Now comes the plaintiff, Bonnie L. Bowers, by her attorney, Chapin B. Bauman, and assigns for review to the United States Court of Appeals for the District of Columbia the following errors committed by the trial court:

1. In granting the Motion of defendants to dismiss the Bill of Complaint.

2. In signing the final decree herein.

[fol. 159] 3. In entering judgment against the plaintiff.

Chapin B. Bauman, Attorney for Plaintiff.

Service of foregoing acknowledged this 11th day of July, 1934.

J. J. Wilson, Asst. U. S. Atty. D. C., Attorney for defendant Hoage. James E. McCabe, Attorney for defendants D. Del Vecchio and Merchants Mutual Casualty Company.

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In Supreme Court of District of Columbia

Designation of Record—Filed July 13, 1934

* * * * * * *

The Clerk will please make up the Transcript of Record for the Court of Appeals to consist of the following:

1. The Bill of Complaint.
2. Motion of defendant Hoage to dismiss Bill of Complaint.
3. Memo: Points and authorities filed in support thereof; points and authorities in opposition.
4. Adoption of the Motion to Dismiss by defendant D. Del Vecchio, trading as Peoples Hardware Stores and Merchants Mutual Casualty Company.
5. Stenographic Transcript of Testimony before defendant Robert J. Hoage.

6. Memorandum of Court.
7. Stipulation re: Stenographic Record.
8. Final Decree.
9. Memo: Appeal noted.

[fol. 160] 10. Order permitting appeal in forma pauperis.
11. Assignments of Error.
12. This designation.

Chapin B. Bauman, Attorney for Plaintiff.

Service of foregoing acknowledged this 11th day of July, 1934.

John J. Wilson, Asst. U. S. Atty; James E. McCabe, Attorney for defendants Del Vecchio and Merchants Mutual Casualty Company.

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[fol. 161] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 162] Minute entry of argument and submission, Jan. 11, 1935, omitted in printing.

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[fol. 163] In United States Court of Appeals for the District of Columbia

No. 6326

Argued January 11, 1935. Decided March 11, 1935

Bonnie L. Bowers, Appellant,

vs.

Robert J. Hoage, Deputy United States Employees' Compensation Commissioner for the District of Columbia; D. Del Vecchio, Trading as Peoples Hardware Stores; and Merchants Mutual Casualty Company, a Corporation.

Appeal from the Supreme Court of the District of Columbia

Chapin Bauman and John H. Burnett, of Washington, D. C., for appellant.

James E. McCabe, of Washington, D. C., for appellees.

Before Martin, Chief Justice; Robb, Van Orsdel, Hitz, and Groner, Associate Justices.

OPINION

HITZ, Associate Justice:

The appellant, as widow of one Jeff Bowers, claimed compensation before the United States Employees' Compensation Commission because of her husband's death.

Compensation being there denied, she sought injunctive relief against the Commission, and a review of its order, by a bill in equity in the Supreme Court of the District of Columbia.

This bill was dismissed on motion, and this appeal was taken from such action, the appellees being the deputy commissioner who made the order refusing compensation, the decedent's employer, and the insurance carrier.

The case has been twice heard before the deputy commissioner; twice in the Supreme Court of the District of Columbia; and twice in this court. The ultimate question in controversy is whether the decedent killed himself intentionally or accidentally, upon which question the lower tribunals have differed, and when the case was here before we remanded it to the deputy commissioner to make a finding of fact as to suicide or accident.

[fol. 164] This has now been done, and on the theory of suicide, the deputy commissioner has rejected the claim for compensation because, as he puts it, "the employee's death was the result of his willful intent to injure or kill himself and that said injury and death did not arise out of his occupation."

The trial court, on a motion, dismissed the widow's bill to review this order, basing its action in part upon observations contained in our former opinion (62 App. D. C. 327).

At 10:15 on the morning of September 10, 1931, Mr. Bowers was discovered lying on the floor of his employer's hardware store on Seventh Street in the city of Washington, dying from a gunshot wound in the chest.

He was then unconscious and was never able to give an explanation of the occurrence.

The bullet had passed entirely through his body on a nearly straight line and lodged in a can of paint on a shelf. The cartridge shell had been ejected and was found on the counter of the store, while his pistol was found in a partially closed drawer in the counter.

The store was in a neighborhood notoriously dangerous, where fighting was frequent and robberies numerous; pre-

vious managers of this store had provided themselves with pistols for their protection; Bowers had followed this custom, though not doing so in previous places of employment; and he was shot with his own pistol.

On the night before an attempt at burglarly had been made and the back building of the store had been opened by forcing the door.

Just before the shooting Mr. Bowers had bargained with a carpenter to repair the woodwork of this door, after which Bowers himself was to install a new lock.

His body was discovered by this carpenter, who heard his groans while at work. So the death occurred in the decedent's place of employment, during his hours of employment, shortly after attending a matter of business, which must shortly return to him for further attention.

Mr. Bowers' accounts were found to be in order; he lived happily with his wife and child, and within his means; his bank balance was sufficient for any needs, the record reveals; he was esteemed by his employer; many witnesses testified to his cheerful disposition; and that he was not given to worry or complaint.

The night before his death he wrote to his mother in Alabama, the letter bearing postmark of the Washington post office a few minutes after his death. This letter contained nothing unusual, and closed with a "sure hope these few lines will find you well. This leaves us very well. Excuse me for not writing sooner. Won't wait so long next time. Answer soon in long letter. May God bless you, from Jeff, Bonnie, Albert."

The motive relied on to indicate suicide was ill health, and while it is true that Mr. Bowers had undergone an operation for mastoiditis two years before, and was still troubled by a sequel or recurrence of that difficulty, he appears not to have consulted a physician until three weeks before his death. That physician arranged for his treatment without expense at a hospital, where he went on the three succeed- [fol. 165] ing days following his examination, but not thereafter. The physician testified that Mr. Bowers did not seem much alarmed, though he had largely lost the hearing of one ear, and complained of some pain and consequent loss of sleep.

The fact that decedent was killed by his own gun held in his own hand was apparently regarded by the deputy com-

missioner as evidence of suicide, but since an attempt had been made to break into the premises on the night before, it was natural enough for Mr. Bowers, as manager of the store, on the next morning to examine the pistol he kept there for use in an emergency.

That the bullet entered the body on a nearly straight line, and that the muzzle of the pistol was evidently pointed toward the decedent at short range, were significant circumstances, but there is much unfortunate precedent for men looking into the wrong end of guns held in their own hands, with no intention of sucide yet with tragic results.

We are convinced by our study of the record that the evidence is at least as consistent with accident as with suicide, and consequently that the finding of suicide is not in accordance with law, for while the act provides that no compensation shall be payable where an employee wilfully kills himself (section 903-B, title 33, chapter 18, U. S. C. A.), it also provides, in section 920, that, "in any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary—

(a) That the claim comes within the provisions of this chapter.

(b) That the injury was not occasioned by the wilful intention of the injured employee to injure or kill himself or another.

In this case these presumptions of law must turn the scale, for whatever measure of evidence may generally suffice to support other findings of a deputy commissioner, a finding of suicide in the absence of substantial evidence thereof is not in accordance with law. For substantial evidnce must carry the quality of proof, with fitness to induce conviction; and the evidence on which the deputy commissioner acted here does not reach that standard.

This presumption against suicide is based on the love of life, extends alike to the sick and the well, and operates under the common law as well as in this statute. Insurance Company vs. McConkey, 127 U. S. 667.

As said by Mr. Justice Gray, when chief justice of Massachusetts, "by the common law of England, suicide was considered a crime against the laws of God and man, the lands and chattels of the criminal were forfeited to the

king, his body had ignominious burial in the highway, and he was deemed a murderer of himself and a felon." 123 Mass. 422.

Because of the absence of substantial evidence of suicide, as required by the act, the decree dismissing the bill is not in accordance with law, and is therefore reversed, with directions to remand the cause to the deputy commissioner to make an order for compensation.

The views of this opinion are thought to be supported by the following authorities: Int. Com. Comm. v. Louis. & Nash. R. R., 227 U. S. 88, 92; Travellers Ins. Co. v. Allen [fol. 166] (C. C. A. 8), 237 Fed. 78; Powell v. Hoage, 57 F. (2d) 766, 61 App. D. C. 99, 100; Fidelity & Casualty Co. of New York v. Burris, 59 F. (2d) 1042, 61 App. D. C. 228; New Amsterdam Casualty Co. v. Hoage, 62 F. (2d) 468, 61 App. D. C. 306, 307.

Reversed.

A true copy.
Test:

——, Clerk, United States Court of Appeals for the District of Columbia.

---

[fol. 167] In United States Court of Appeals for the District of Columbia, January T , 1935

No. 6326

Bonnie L. Bowers, Appellant,

vs.

Robert J. Hoage, Deputy United States Employees' Compensation Commissioner for the District of Columbia; D. Del Vecchio, Trading as Peoples Hardware Stores; and Merchants Mutual Casualty Company, a Corporation.

Decree—March 11, 1935

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration

whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed, with directions to remand the cause to the Deputy Commissioner to make an order for compensation.

Per Mr. Justice Hitz.

March 11, 1935.

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[fol. 168] In United States Court of Appeals for the District of Columbia

[Title omitted]

Summons and Severance—Filed April 30, 1935

To Robert J. Hoage, Deputy United States Employees' Compensation Commissioner for the District of Columbia.

This is to notify you that the petitioners, D. Del Vecchio, trading as Peoples Hardware Stores, and Merchants Mutual Casualty Company, a corporation, will apply to the Supreme Court of the United States for a writ of certiorari to review the above-entitled cause for the purpose of determining whether or not the United States Court of Appeals for the District of Columbia has committed error in its adjudication of this case; and they, the said D. Del Vecchio, trading as Peoples Hardware Stores, and Merchants Mutual Casualty Company, a corporation, by their attorney, summons you to join in this petition.

If you do not so join, the said petitioners shall proceed alone and your failure to so join shall constitute a severance in the further prosecution of this case.

James E. McCabe, Attorney for Appellees, D. Del Vecchio, trading as Peoples Hardware Stores, and Merchants Mutual Casualty Company, a corporation.

[fol. 169] Service of a copy of the foregoing summons and severance acknowledged this 30 day of April, 1935.

Robert J. Hoage, Deputy United States Employees' Compensation Commissioner for the District of Columbia.

April 30, 1935

We consent to the severance.
John J. Wilson, Assistant U. S. Attorney, of Counsel for Robert J. Hoage.

[fol. 170] [File endorsement omitted.]

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[fol. 171] In U. S. Court of Appeals for the District of Columbia

[Title Omitted.]

Designation of Record—Filed April 18, 1935

Now comes the appellees, Merchants Mutual Casualty Company, and D. Del Vecchio, trading as Peoples Hardware Stores, Inc., by their attorney, and requests the Clerk to prepare a transcript of record on Writ of Certiorari to the Supreme Court of the United States in the above entitled cause and include therein:

1. Record
2. Note of the Argument
3. Opinion
4. Decree
5. Summons and Severance
6. This Designation
7. Clerk's certificate

James E. McCabe, Transportation Building, Attorney-for-Appellees.

Service of a copy of the foregoing Designation of Record acknowledged this 18th day of April, 1935.
Chapin B. Bauman, Attorney-for-Appellant.

[fol. 172] [File endorsement omitted.]

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[fol. 173] Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 27, 1935

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

MAY 1 1935

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1934

No. [redacted] 37

D. DEL VECCHIO, trading as PEOPLES HARDWARE STORES, AND MERCHANTS MUTUAL CASUALTY COMPANY, a corporation,
*Petitioners,*

v.

BONNIE L. BOWERS
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JAMES E. MCCABE,
*Attorney for Petitioners D. Del Vecchio, trading as Peoples Hardware Stores, and Merchants Mutual Casualty Company, a corporation.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1934

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No. ....

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D. DEL VECCHIO, trading as PEOPLES HARDWARE STORES, AND MERCHANTS MUTUAL CASUALTY COMPANY, a corporation,
*Petitioners,*

v.

BONNIE L. BOWERS
*Respondent.*

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## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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The petitioners, D. Del Vecchio, trading as Peoples Hardware Stores, and Merchants Mutual Casualty Company, having been granted severance from their co-defendant in the United States Court of Appeals for the District of Columbia, Robert J. Hoage, Deputy Commissioner for the District of Columbia U. S. Employees' Compensation Commission, appear individually and separately and by their petition respectfully shows:

Petitioners, D. Del Vecchio, trading as Peoples Hardware Stores, and the Merchants Mutual Casualty Company, a corporation, seeks to have reviewed by this Honorable Court a decision of the United States Court of Appeals for the District of Columbia in a case which arose under the Longshoremen's and Harbor Workers Compensation Act, as applied to the District of Columbia (U. S. C. Sup. II, title 33, Ch. 18; 44 Stat. 1424; 45 Stat, 600).

This case was before the Deputy Commissioner for decision on two separate occasions, was heard in the Supreme Court of the District of Columbia twice on motions to dismiss bills for injunction filed by the respondent, and was twice before the United States Court of Appeals for the District of Columbia.

When the case was first heard before the Deputy Compensation Commissioner he made an award in favor of the petitioners on February 15th, 1932, and rejected the claim for the reason that the respondent had failed to establish by evidence that the duties of the respondent's husband required the use of a gun, or that in using a gun at the time in question, the employee was in any way furthering his master's interests, or that the injury resulting in death arose out of his employment. Bill for injunction, under section 21 of the Compensation Act above designated, was filed by the respondent and the Commissioner's decision was reversed by the Supreme Court of the District of Columbia on June 11, 1932, after hearing on a motion to dismiss respondent's bill, which motion was filed by petitioners and the U. S. Attorney on behalf of Deputy Commissioner Hoage, that Court holding that the death arose out of the employment and that the Deputy Commissioner's conclusions were not binding on that Court.

Petitioners electing to stand on their motion to dismiss, a final decree and mandatory injunction was entered by the Supreme Court of the District of Columbia, from which decree the petitioners noted an appeal to the United States Court of Appeals for the District of Columbia. On a review

of the case for the first time by the United States Court of Appeals for the District of Columbia, (67 Fed, (2nd) 751) that Court reversed the Deputy Commissioner's finding in which the Commissioner had used the language that the claimant had "failed to establish by evidence that the duties of the employee required the use of a gun, or that in using the gun at the time the employee was in any way furthering his master's interests, or that the injury resulting in death arose out of his employment" and decided that there was not substantial evidence to support such a finding of the Deputy Commissioner, but the Court also found that an inspection of the evidence showed that the case was tried before the Deputy Commissioner on the theory of suicide, and that there was no finding one way or another by the Deputy Commissioner on that important and controlling issue in the case, and the case was referred back to the Deputy Commissioner for a finding of fact on the question of suicide, the Appellate Court holding that it was a controverted question of fact as to which there was contradictory evidence in the record and that this question was one for the Commissioner to decide.

The case was then sent back to the Deputy Commissioner under a Decree entered by the Supreme Court of the District of Columbia, in accordance with the decision of the United States Court of Appeals for the District of Columbia, to find the facts as to the claim of suicide, and to award compensation in accordance with the decree in the event that the Deputy Commissioner found that Jeff Bowers did not commit suicide.

The Deputy Commissioner found on the second review of the evidence in the case that the employee involved came to his death by a gunshot wound of the chest of his own hand, as a result of willful intent on his part to injure or kill himself, and that said injury and death therefore while arising in the course of his employment, did not arise out of his employment and the claim was rejected by the Deputy Commissioner.

After this second finding of the Deputy Commissioner the respondent again filed a bill for mandatory injunction in the Supreme Court of the District of Columbia to set aside the second rejection of the claim by the Deputy Commissioner. The petitioners, and also the Deputy Commissioner, through the U. S. Attorney, filed a motion to dismiss the bill, which motion was granted, and from the final decree dismissing respondent's bill of complaint, the respondent filed an appeal to the United States Court of Appeals for the District of Columbia. The United States Court of Appeals for the District of Columbia on its second review of the case reversed the decision of the Supreme Court of the District of Columbia and the Deputy Commissioner and it is this decision which petitioners seek to have reviewed.

## STATEMENT OF THE FACTS.

On September 10th, 1931, one Jeff Bowers was employed in the District of Columbia by D. Del Vecchio, trading as the Peoples Hardware Stores, and on that day was at his place of employment in said hardware store, which was located at 1311 7th Street, N. W.

On the day mentioned Jeff Bowers was found unconscious on the floor of the store, located at the above mentioned address, about 10 o'clock a.m., in a dying condition as the result of a gunshot wound, from the effects of which he died within about an hour at Casualty Hospital on the same day, without regaining consciousness, the gunshot wound being just above the heart, the bullet passing straight through the body and coming out the back at a point almost opposite the place where it went in. There were no witnesses to the shooting, and it was admitted that he was shot by a bullet from his own gun, which gun was found in a drawer under the counter a few feet away from where the body was found. There was no evidence of robbery in the store.

He was survived by his widow, the respondent Bonnie L. Bowers, and a minor child, Jeff A. Bowers. These persons, under the provisions of the Compensation Act, were his sole beneficiaries.

At the first and only hearing before the Deputy Commissioner evidence was introduced on behalf of the respondent to the effect that the store where Jeff Bowers worked was in an undesirable, or rough neighborhood, where fights were frequent, and one of the witnesses classified it as a tough neighborhood (R. 46, 50, 51, 56, 60, 73); that previous managers at the store had kept a gun at the store, although Jeff Bowers had never obtained permission from the manager to have a gun at this particular store (R. 79); that a carpenter, John Hoffman, testified he visited the hardware store where Jeff Bowers was employed on the morning of September 10th at about 10 a.m. and that Bowers had told him that a strip that covered the door of the warehouse back on the alley had been broken off, probably the night before, by someone who had broken into the back part of the warehouse and that he wanted Hoffman to put a new strip on the door (R. 64); the location of the door with relation to the main part of the store is shown by a diagram on page 148 of the record: The warehouse room on which the door strip was to be replaced contained wire (R. 68). There was no evidence submitted to show that anything had been taken from the store or warehouse room at the time the strip was broken off the warehouse door the evening before.

A short time before Bowers was found mortally wounded, he, Bowers, had bargained with carpenter Hoffman to repair the broken strip on the door above mentioned and it was while the carpenter was repairing the broken strip on the warehouse door that he heard a noise like an electric bulb bursting in the front part of the store and heard someone groaning. On investigation he discovered the body of Bowers lying near the cash register (R. 64, 65).

Testimony was offered by the widow of Jeff Bowers, by neighbors and relatives as to his happy disposition, that he lived within his means and that he was not given to worry and complaint, and also to the fact that the night before his death he wrote a letter to his mother in Alabama, the contents of which letter was discussed in the Appellate Court's opinion and which will be referred to more fully later in this petition. Jeff Bowers' accounts were found to be in order and his employer testified as to the esteem in which he was held and as to his disposition and health as he observed them.

It was admitted that Jeff Bowers was shot by his own gun. There was no evidence on the counter or in the vicinity of where the gun was found that Jeff Bowers was cleaning the gun at the time the gun was discharged (R. 140, 141).

On behalf of the petitioners the following evidence in brief was introduced:

Dr. James A. Smart, specialist in diseases of the eye, ear, nose and throat, testified that he first saw Jeff Bowers on August 24th, 1931, and that Jeff Bowers told him that in November, 1928, he had had an operation on his left mastoid in a Washington hospital and since that time he had had a discharge, almost continuous from his ear, and that during the two months preceding his visit to Dr. Smart's office he had had considerable pain in his left ear with practically no hearing in that ear (R. 32). He told the doctor that this pain bothered him worse at night, that he could not sleep much, that sometimes he was free from pain for a week or so, but that the pain seemed to be getting worse (R. 33); that on his examination of Jeff Bowers the doctor found there was some pus in the canal of the ear which had a very foul odor, that the drum of his left ear was completely gone and there was some scar tissue present in the middle ear and the doctor was of the opinion that he had had and did have a severe infection present in his middle ear at the time he made this examination;

that the doctor suggested he go to the Episcopal Eye, Ear, Nose and Throat Hospital for an examination and that if certain conditions were found it might be necessary for him to have another mastoid operation (R. 35).

Dr. Smart also testified from the records of the George Washington University Hospital showing that a mastoid operation was performed on Jeff Bowers' ear on November 11th, 1928, the ear cells curetted and a system of drainage established through the canal; that sometimes a mastoid operation will result fatally and that sometimes following a mastoid operation the infection still persists, and that in Bowers' case, after the operation, he had an infection in the middle ear with a discharge of pus from the external ear (R. 37), and if the first operation had been successful Dr. Smart testified no such infection would have been found as was found in his examination of Mr. Bowers' ear in August, 1931 (R. 38). Dr. Smart testifying from the records of the Episcopal Eye, Ear, Nose and Throat Hospital, showed that following Dr. Smart's advice to Mr. Bowers, he, Mr. Bowers, visited the hospital on August 27th, 28 and 29th, 1931, and that an X-ray report on Bowers' left mastoid showed marked sclerosis and obliteration of the cell structures on the left side (R. 40). The record shows that after his visit of August 29th, 1931, Bowers made no further visits to the doctor or hospital and that he was found shot within a period of twelve (12) days from the time of his last visit to the hospital. The doctor testified that Mr. Bowers had not been discharged for further treatment by the hospital on August 29th, 1931, nor did he go back to see Dr. Smart after the first examination (R. 41, 42); Dr. Smart testified that Jeff Bowers complained of severe headaches to him and that the pain in his ear was sufficient to cause the headaches and could very well have been sufficient to have caused him constant pain, sleeplessness and nervousness. (R. 43.)

The testimony of Dr. Joseph D. Rogers given before the coroner's jury investigating the cause of Jeff Bowers' death

was stipulated into the record of the hearing before the Deputy Commissioner owing to the serious illness of Dr. Rogers. This testimony showed that Dr. Rogers performed an autopsy upon Jeff Bowers on September 19th, 1931, at 4 o'clock p.m.; that Jeff Bowers was a white man about thirty years of age, height 6 feet, weight 175 to 185 pounds; that at the time Dr. Rogers made the examination of the deceased, Bowers had no clothing on above the waist; that he had a bullet wound of the chest 3½ inches from the midline and 1¼ inches above the left nipple, going through the chest at about the same level and coming out 1½ inches from the left of the spine; that the lung was punctured; that there was a tremendous amount of hemorrhage inside the left pleural cavity and that there were eight small marks about the entrance of the wound indicating powder burns; that an examination of the outside shirt showed powder marks and that in his opinion death in this case was due to a gunshot wound, left lung, hemorrhage and shock (R. 108, 109), and that from his observation in this case the shot could have been fired by Jeff Bowers, taking into consideration the powder marks and the course of the bullet; Dr. Rogers was of the opinion that there was no doubt that the point of entrance of the bullet was in the front and not in the back and from his observation of the injury that caused his death, Jeff Bowers could have moved after firing the shot, such action depending on how rapid the hemorrhage was, the vitality of the man and how much nerve force he had to make himself move; and the wound was not of such a character as to cause immediate death (R. 109); that he could have taken three or four steps following the shot and that he might have had sufficient strength left, after the shooting, to have gone to a drawer in the counter and placed the gun therein; that Dr. Rogers had seen several cases where persons had shot themselves through the heart and fell and closed a drawer and the pistol would drop in the drawer and the man falling would close the drawer of the bureau or table and a man's ability to do

such an act would be less if he were shot through the heart than if he received a wound such as was described in this case (R. 110).

Dr. Edwin R. Donaldson testified that he was a chemist attached to the Police Department and that on September 10th, 1931, he received a package of clothing from the Detective Sergeant belonging to Jeff Bowers containing one blue shirt, and one pair of B. V. D.'s; that he made an examination of these garments to see if there were powder stains on the shirt and undershirt; that the shirt contained particles of unburned powder in the vicinity of the point of entrance of the bullet just above the upper right-hand corner or right-hand corner of the pocket; that there was no powder burns on the B. V. D.'s; that the pocket was on the left hand side, looking at the shirt from the front it was the upper right-hand corner (R. 100) about four to six inches from the mid-line of the shirt; that he found particles of unburned powder and burned powder and that he had testified at the coroner's inquest that there was a section of the shirt, at the entrance of the bullet, that was charred which showed evidence of close contact with the gun that had been fired and that he would say it was within two to three inches; that the cloth was burned away in the immediate vicinity of the hole (R. 101); that when there is charring it shows that the revolver was held close and there is no charring when the muzzle of a revolver is held more than four to five inches away; that he found charring in this case (R. 102, 103).

Detective Sergeant Floyd A. Truscott testified that on September 10th, 1931, at about 10:15 a.m., he saw the body of Jeff Bowers at Casualty Hospital; that Bowers had just died and there was a wound on his body in the front and in the back, the one on the front being to the left of the mid-line about two inches toward the left nipple; that the wound was on the left side of the body and the bullet had passed directly through the body from the front to the back; that the investigation at the store where Bowers worked, con-

sisted of obtaining data as to where the body was found, locating the bullet, the gun and ejected shell, and questioning the man who found the body, the last customer who was in the store and also conversation with the brother-in-law of Bowers (R. 85); that he found the bullet had penetrated a paint can back of the drawer in the counter near the rear part of the store; that Dunn, brother-in-law of Bowers, called his attention to the drawer in the counter and the fact that Bowers usually kept a gun in there; that he found the gun in the drawer with the muzzle pointing towards the direction in which the drawer opened; that in the drawer were several fresh blood stains, also on the edge of the counter right above the drawer were one or two blood stains; that the drawer was not entirely closed, but the edge of the drawer was flush with the edge of the counter; that there were several cartridges in the magazine; and he also noticed where the bullet had hit a paint can the same height from the floor as the bullet would be when passing through a man of the height of the deceased (R. 86, 87); that the empty revolver shell was found about twelve to fifteen feet away at a point where if Bowers were standing facing the middle of the store, behind the drawer, and had had the gun pointed towards him and shot it off, that one could reasonably expect to find the shell where this shell was found, from a gun which had an automatic ejector on it such as this gun had (R. 88); that he was present at the time Lieut. Fowler made the ballistic test of the gun, of the shell and the bullet, and the bullet and shell were both fired from Bowers' gun (R. 89); that there were no finger prints on the gun; that on examination by the Deputy Commissioner, Detective Sergeant Truscott stated that powder will stain up until twelve inches and if a gun is fired at point blank range it will have its effect on a very small area and as the gun is brought back the area spreads, but the density decreased; that the powder stains in this case were small in diameter, showing that the gun had been fired from practically a point blank range; that the stain was a very

small area around where the bullet itself penetrated (R. 91); that Truscott identified Benjamin Albert Dunn, whose testimony has been previously given in some detail, as having told him on the day of the shooting at the store that he was the brother-in-law of the deceased and that said Benjamin Albert Dunn had told him, Detective Truscott, that the deceased had been rather despondent recently and that some time ago the deceased had been operated on for ear trouble, and that he had recently been to the doctor again for treatment and that he seemed to be feeling right bad about the trouble he was having with his ear; that this conversation took place within two hours after the shooting while he was investigating the case in the store (R. 93, 94); that Dunn volunteered this information; that when the gun was found there were four shells in the gun (R. 95); that the gun was not fully loaded; that there were no finger prints on the gun—just the sides of the finger, not enough to develop a finger print (R. 96).

The question in controversy was whether the decedent killed himself intentionally or accidentally.

On behalf of the respondent evidence was given as above described tending to show that Jeff Bowers was in good health with no worries and with happy marital relations; that an attempted robbery at the store was made the night before and that as he was killed during working hours the inference was that his death was accidental and arose out of and in the course of his employment, particularly in view of the presumption under Section 20 of the Compensation Act above mentioned.

The contention of your petitioners is that there was ample evidence in the record to support the deputy commissioner's finding of suicide as a matter of fact and if there was evidence to support such a finding the court could not disturb such a finding of fact, nor should the Appellate Court have weighed the evidence which was given before the Deputy Commissioner.

## QUESTION PRESENTED.

The controlling question in this case is whether the United States Court of Appeals for the District of Columbia, in view of the decisions of the Supreme Court of the United States in the case of *Crowell, Deputy Commissioner*, v. *Benson*, 52 S. C. R. 285, and *L'Hote* v. *Deputy Commissioner*, 52 S. C. R. 499, and *Voehl* v. *Indemnity Company of North America*, 53 S. C. R. 380, erred in refusing to give conclusive and final effect to the findings of fact of the Deputy Commissioner as contained in the compensation order and rejection of claim, filed January 30th, 1934, in the statutory review limiting the Court upon review to the sole inquiry whether the compensation order was "not in accordance with law"; or, in other words, whether that Court erred in delving into the conflicting evidence to reweigh the facts presented before the Deputy Commissioner in the face of substantial evidence in support of the finding of fact contained in the compensation order.

## JURISDICTION.

Jurisdiction to issue the writ prayed for is conferred upon this Honorable Court by Section 240-A of the Judicial Code, as amended.

The following points are submitted as being substantial grounds for granting the petition and issuing the writ.

1. Sec. 240-A of the Judicial Code as Amended by the Act of February 13, 1935, chap. 299, sec. 1; 43 Stat. 938, U. S. Code Title 28, Sec. 347a.

2. That the United States Court of Appeals for the District of Columbia in reversing the Deputy Commissioner's decision failed to follow the rulings of this Court and is in conflict with the decision of this Court in *Crowell, Deputy Commissioner*, v. *Benson*, 285 U. S. 22, 52 S. C. R. 285, *L'Hote* v. *Deputy Commissioner*, 52 S. C. R. 499, and *Voehl* v. *Indemnity Company of North America*, 53 S. C. R. 380.

3. The case comes directly within the scope of paragraph (c) of Rule 38 of this Honorable Court in that the United States Court of Appeals for the District of Columbia has decided a question of general importance involving construction of a statute of the United States, which has not been, but should be settled by this Honorable Court.

4. The decision complained of is untenable and contrary to the evidence in the case; and it results in a substantial denial of justice.

WHEREFORE, petitioners respectfully prays that the Writ of Certiorari be issued out of this Honorable Court directed to the United States Court of Appeals of the District of Columbia commanding it to certify to this Court for its review and determination a full and complete transcript of the record and all proceedings in case No. 6326 entitled on its docket *Bonnie L. Bowers* v. *Robert J. Hoage, Deputy U. S. Employees' Compensation Commissioner for the District of Columbia;* D. Del Vecchio, trading as Peoples Hardware Stores; and Merchants Mutual Casualty Company, a corporation; and that the judgment entered in said cause by the United States Court of Appeals for the District of Columbia may be reversed; and for such other and further relief as to the Court may seem meet and proper.

JAMES E. MCCABE,
*Attorney for Petitioners D. Del Vecchio, trading as Peoples Hardware Stores, and Merchants Mutual Casualty Company, a corporation.*

## BRIEF IN SUPPORT OF PETITION.

SECTIONS OF COMPENSATION ACT INVOLVED.

*Title 33, Chapter 18, U. S. C. A.:*

*Section 902:*

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises out of such employment or as naturally or unavoidably results from such accidental injury and includes an injury caused by the willful act of a third person directed against the employee because of his employment.

*Section 903:*

(b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

*Section 920:*

In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary that

(a) That the claim comes within the provisions of the Act.

* * * * * * * * *

(d) That the injury was not occasioned by the willful intention of the injured employee to injure himself or another.

*Section 921:*

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in the order, and instituted in the Federal District Court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia,

if the injury occurred in the District). The orders, writs and processes of the court in such proceedings may run, be served and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the Deputy Commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the Court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto that such irreparable damage would result to the employer and specifying the nature of the damage.

## ARGUMENT.

**Can the Court Weigh the Evidence Submitted Before the Compensation Commissioner for the Purpose of Arriving at a Different Conclusion than the Deputy Commissioner.**

The United States Court of Appeals for the District of Columbia in its first decision in this case of November 13th, 1933, 67 Fed. (2d) 751, stated with reference to the evidence disclosed at the hearing relating to the question of suicide:

> "• • • but an inspection of the evidence shows that the case was tried before the deputy commissioner on the theory of suicide, but there was no finding one way or the other by the Deputy commissioner on this important, and, as we think, controlling issue in the case. The statute bars recovery in the case of suicide. (Act March 4, 1927, c. 509, sec. 3, 44 Stat. 1426; title 33, U. S. C. A. sec. 903) The deputy commissioner should, as we think have made a finding of fact on this question. He saw the witnesses and observed their demeanor and is better qualified than we are to pass on this question of fact. The act contemplates that he shall do so, and the regulation promulgated for his guidance directs him to. If we should decide the question for him we would be passing on a controverted question of fact as to which there is contradictory evidence in the record. This is clearly contrary to the intent of the act. In these circumstances we think the case should be returned to the deputy commissioner with instructions to find the facts as to the claim of suicide • • •"

**In view of the statements made by the United States Court of Appeals for the District of Columbia in its decision of November 13, 1933, it is not clear as to how the Court could render the decision appealed from in this case, as the first opinion of November 13, 1933, correctly expresses the law as established by other precedents in that Court, in the U. S. Circuit Court of Appeals, Ninth Circuit, and decisions of this Honorable Court.**

The United States Court of Appeals for the District of Columbia in its first opinion quoted above admits that the deputy commissioner saw the witnesses and observed their demeanor and was better qualified than the Court to pass on the question of fact involved in this case. The Court also states on this controverted question of fact, namely, suicide, there was contradictory evidence in the record and that it was clearly contrary to the intent of the Act that the Court should attempt to make a decision on a controverted question of fact.

This first decision of the Court of Appeals of the District of Columbia of November 13, 1933, is clearly supported by its previous decisions on compensation cases in the case of *Powell* v. *Hoage*, 57 Fed. Rep. (2d) 766, decided March 21, 1932; and in the case of *Hoage, Deputy Commissioner, et al.* v. *Employers Liability Assurance Corporation, Ltd.*, 62 D. C. Appeal cases, page 77, on which application for certiorari was denied by this Honorable Court.

In the case of *Powell* v. *Hoage*, 57 Fed. Rep. (2d) 766, *supra*, the United States Court of Appeals for the District of Columbia in closing its opinion stated:

> "While, therefore, we might have reached a different conclusion on the evidence, we feel that we may not, under the rule we have announced, substitute our judgment for that of the commissioner, and, since, we may not, it follows that we must affirm the act and decision of the Court below."

In the case of *Hoage, Deputy Commissioner, et al*, v. *Employers Liability Assurance Corporation, Ltd.*, 62 D. C. *Appeal cases*, 77, *supra*, the United States Court of Appeals for the District of Columbia, in commenting on the powers of the deputy compensation commissioner under the compensation act for the District of Columbia, stated:

> "In the case of *Crowell* v. *Benson*, 285 U. S. 22, 46, 52 S. Ct. 285, 291, 76 L. Ed. 598, the Supreme Court

stated that 'as to questions of fact, arising with respect to injuries to employees within the purview of the Act, the findings of the Deputy Commissioner, supported by evidence, and within the scope of his authority, shall be final'. And in this Court and in the other Federal Appellate Courts the rule is well established that mere conflict in the testimony, or a preponderating weight of evidence will not justify disturbing the findings of the Commissioner. Except as to so-called 'constitutional rights' the decision of the Commissioner is final where there is evidence to support it, and the award made by the Commissioner in such circumstances can be set aside only and if not in accordance with law".

In the case of *Pacific Employers Insurance Company, a corporation, and Western Terminal Company, a corporation,* v. *Warren H. Pillsbury, Deputy Commissioner, 13th Compensation District, and Mary Hansen, appellees,* 61 Fed. Rep. (2d) 101, decided September 17, 1932, which case arose under the provisions of the Longshoremen's and Harbor Workers Compensation Act, which is applicable in the District of Columbia, the United States Circuit Court of Appeals for the 9th Circuit, speaking of the powers of the Deputy Commissioner, said:

"considering the case presented, it needs scarcely be stated that in deciding questions of fact the Deputy Commissioner acted with authority to make a final judgment. Conflict in testimony must here be disregarded; preponderating weight may not be measured. The court may only inquire whether an essential matter of fact has been found without supporting evidence." Citing Crowell vs. Benson, 285 U. S. 22."

In compensation cases the Deputy Commissioner sits as court and jury and decides both the law and facts in a case.

In the case of *Crowell* v. *Benson*, 285 U. S. 22, 52 S. C. R. 285, this Honorable Court, speaking of the powers of the Deputy Commissioner, said:

> "* * * that the act contemplates that as to questions of fact arising with respect to injuries to employees within the purview of the Act, the findings of the Deputy Commissioner, supported by evidence and within the scope of his authority, shall be final. To hold otherwise would be to defeat the obvious purpose of the legislation to furnish a prompt, continuous, expert and inexpensive method of dealing with a class of questions of fact which are peculiarly suited to examination and determination by an administrative agency specially assigned to that task * * *.

It is apparent from the wording of the second decision of the United States Court of Appeals for the District of Columbia in the instant case (R. 165) that the Court attempted to weigh the evidence which impelled the Deputy Commissioner in reaching his decision, but, in reviewing what was in the Deputy Commissioner's mind and the justification for his conclusions, the fact was lost sight of that the Deputy Commissioner may not have believed some of the testimony which was offered at the hearing on behalf of the respondent and it is believed that this is a very important factor in this case.

The decision of the United States Court of Appeals for the District of Columbia apparently takes for granted that full weight should have been given to the testimony offered on behalf of the respondent as to the health of the employee, his cheerful disposition, the so-called attempted robbery, and the rough neighborhood in which the store was located, but, it failed to consider that this testimony as to the health and spirits of the employee prior to the shooting might be disregarded by the Deputy Commissioner in its entirety in view of the testimony of Detective Sergeant Truscott of the Homicide Squad of the Police Force of the District of Columbia (R. 85) to the effect that on the morning of the shooting the brother-in-law of the deceased, Benjamin Albert Dunn, told him that the deceased, *had been rather despondent and that some time ago, he, the deceased,* had been operated on for ear trouble and that the deceased had been

to the doctor again for treatment and seemed to be feeling right bad about the trouble he was having with his ear. It must be remembered that this same Benjamin Albert Dunn, brother-in-law of the deceased was one of the witnesses who testified on behalf of the respondent and he gave testimony prior to Detective Truscott being put on the stand, as to the jolly disposition of the deceased, that he had visited the deceased and his wife up to the time of his death and that the deceased was very cheerful and that he noticed no change in the attitude of the deceased whatever until the time of his death (R. 49, 54).

It is also significant that after Detective Sergeant Truscott of the Homicide Squad gave this testimony about the conversation with the said Benjamin Albert Dunn that no testimony in rebuttal of Detective Sergeant Truscott's statements was offered at the hearing.

The court in its opinion also states that the store in which Bowers was working was in a neighborhood notoriously dangerous, and "where robberies were numerous" (R. 164), but these statements of the Court are not borne out by the testimony as there is no evidence in the record showing that the store was in a notoriously dangerous neighborhood, nor is there any evidence by police reports, or otherwise, that robberies were numerous in the vicinity.

The respondent testified that the store was in a very rough neighborhood (R. 46); Benjamin Albert Dunn, brother-in-law of the deceased worked at the same store about eight months (R. 50) and testified that it was a very undesirable neighborhood, that fights were frequent, but that he knew of no attempted robbery or burglary in the neighborhood while he was working there (R. 51); Hiram Kermit Dunn, brother-in-law of the deceased worked at the same store about eight months (R. 56) and he stated that the store was in a bad neighborhood, that there were fights going on and "things like that"; John Hoffman testified that the store was in a colored neighborhood, that there were frequent fights there, mostly in the evening (R. 73)

that 1311 7th St., N. W.—where the store was located—was a pretty rough street; and Samuel Del Vecchio, the owner of the store testified that the store in which Bowers worked was in a colored neighborhood and that it was "a tough neighborhood" (R. 60).

**Was the Order of the Deputy Commissioner Supported by Substantial Evidence.**

A careful review of the evidence in this case discloses that respondent's witnesses testified principally as to the good health and family life of the deceased prior to his death, and as to the character of the neighborhood in which the store was located, together with the facts surrounding the finding of the body of the deceased.

There were no witnesses to the shooting which resulted in the death of the deceased, nor was there any evidence that a robbery had been committed in the store.

The Deputy Commissioner saw the witnesses in this case, heard their testimony, observed their behavior, and he probably was in the best position for judging as to the weight to be given to their testimony as compared to the weight to be given to the testimony offered on behalf of the petitioners.

As regards the testimony offered in behalf of the petitioners, the commissioner could have favorably considered the testimony of Dr. Joseph D. Rogers to the effect that from the nature of the wound, the powder marks at the entrance to the wound and the course of the bullet, that he, Dr. Rogers, was of the opinion that the deceased could have shot himself (R. 109).

The testimony of the chemist, Dr. Edwin R. Donaldson, attached to the Washington Police Department, could have been given substantial weight by the deputy commissioner as he examined the shirt and undershirt of the deceased and he testified that a section of the outside shirt at the entrance of the bullet was charred, which showed to him

evidence of the close contact with the muzzle of the gun, and in his opinion where there was charring it showed that the revolver was held close as there is no charring when the muzzle of a revolver is held from four to five inches away (R. 101, 102, 103).

The testimony of Detective Sergeant Floyd Truscott could also have been given substantial weight in the mind of the Deputy Commissioner as he testified that the powder burns in this case were small in diameter showing that the gun had been fired from practically a point blank range and that the stain was very small in area around where the bullet itself penetrated (R. 91).

The Deputy Commissioner could have given weight to the testimony of Detective Sergeant John C. Dalglish of the Homicide Squad to the effect that when he examined the premises on the morning of the shooting there was no evidence around the counter or above the drawer where the gun was found to show that anyone had been cleaning the gun as the counter was in order and there were several display cards on it and nothing had been disturbed (R. 141).

There was no evidence in the record that Bowers had been killed by any intruder, the cash register tallied and everything seemed to be in shape around the store according to the employer's testimony (R. 80, 81, 82).

It is also earnestly urged that the testimony of Dr. James A. Smart as to the condition of the deceased's ear only a comparatively short time before the shooting, the statements made to the doctor by the deceased regarding his condition, the possibility of another serious operation on the same ear which had been operated on previously, and the statement made by the brother-in-law to Detective Sergeant Truscott at the store on the morning of the shooting, could have influenced the Deputy Commissioner in reaching the conclusion which he did in this case, when considering the fact that the muzzle of this revolver in question was pointed straight at the chest and the bullet from

the gun entered just above the left nipple and passed directly through the man's body on practically a straight line. The manner in which the gun was held close to the body so that the muzzle was at a point blank range as was evidenced by the charring of the shirt and the powder marks, could have been considered substantial evidence by the Commissioner that the gun was intentionally placed there by the deceased for the purpose of shooting himself and that therefore the gun did not go off accidentally.

The letter mentioned in the Courts opinion as having been written by the deceased to his mother the night before his death could easily have had two meanings in view of the evidence submitted in this case. The Court in passing upon the same simply quoted the last part of the letter (R. 164), but, in view of the evidence offered on behalf of the petitioner in the hearing before the Commissioner the first part of that letter (R. 135) might be considered very significant, especially when viewed in the light of the testimony offered by the neighbors and relatives of the deceased to the effect that the deceased, prior to his death, was in excellent health and spirits. The first part of this letter reads as follows (R. 135):

> Wednesday night, Sept. 9, 1931.
>
> Dear Mother: Will try and answer your letter received before you left Mich. Guess you thought I wasn't going to answer but I haven't been feeling so good
> * * * ,,

Certainly the first part of this letter is not optimistic as regards his health and spirits and the Deputy Commissioner could have considered this part of the letter with other evidence offered on behalf of the petitioners, together with the statements made by Benjamin Albert Dunn in the store the morning of the shooting and thereby have reached the conclusion which was evidenced in his finding.

The Court's decision complained of in this case (R. 165) calls attention to the fact that there is

"* * * much unfortunate precedent from men looking into the wrong end of guns held in their own hands with no intention of suicide yet with tragic results * * *"

The evidence shows in this case that Bowers was not shot in the head so that it could hardly be stated that he was looking into the wrong end of the gun. Placing the gun in the position which it must have been held so that the muzzle was pointing close to the body just above the heart and was fired at practically point blank range with the man in a standing position could have very likely convinced the Commissioner that the wound was self inflicted.

It must be remembered that the bullet in this case did not transverse the body on an angle such as very likely would have happened had the gun gone off accidentally while it was being casually examined in the man's hand. The Commissioner could well have reached the conclusion that a person would not normally examine a gun by placing the muzzle up against his left breast.

Certainly this inference is a reasonable inference from all the circumstances and facts in this peculiar case where the shot was not witnessed.

We do not believe that it can reasonably be stated that the evidence given on behalf of the petitioners before Deputy Commissioner Hoage was not substantial evidence. Apparently it was not considered as substantial in view of the Court's decision in this case, but, it is respectfully submitted that all the facts in this case must be considered and if the evidence offered on behalf of the petitioners as above enumerated, is substantial, it is respectfully submitted that the Deputy Commissioner's decision should not have been reversed in view of the law established in the decisions hereinbefore quoted.

**Presumption Under Section 920 of the Act is Not a Substitute for Facts.**

Section 920, paragraphs (a) and (d) of the Compensation Act hereinbefore quoted presumes that a claim comes within the Act and that the injury was not occasioned by the willful intention of the injured employee to injure or kill himself, and these presumptions are given great weight in the decision of the Court in the instant case (R. 165). It is earnestly contended however that such statutory presumptions in compensation cases have been considered by the Courts as not being substitutes for facts:

*Eldridge* v. *Endicott Johnson & Co. et al.*, 126 N. E. Rep. 254.
*Collins* v. *Brooklyn Union Gas Company*, 171 Appellate Division, 381, 156 N. Y. Supp. 957.
*Russo* v. *Jarvis Stores*, 193 N. Y. Appellate Div. 587.

Unwitnessed deaths, although happening on the premises, are not necessarily brought within the provisions of the Compensation Act, notwithstanding the presumptions under the Act. In the case of *Burak* v. *City Hall Garage*, 247 N. Y. Supp. 887, also reported in 10 *Industrial Bulletin*, N. Y., page 126, the facts involved a garage foreman who was found dead on the employers' premises. About ten minutes before his death he was seen alive by a customer and at that time was apparently polishing an automobile. About ten minutes later another customer found him lying dead on his back with a bullet wound horizontally through his chest. Powder stains were upon his shirt and skin. There was no evidence of robbery. A small old-fashioned revolver was found about six feet from where he lay and under the end of a sedan belonging to a police sergeant. The testimony was that the deceased was a man of steady habits, a good father, cheerful of disposition and without financial or other worries. On his way to work he had left an order for luncheon at a restaurant near his place of

work with an expressed intent to come in for it later. A referee awarded death benefits to his wife and children. The Industrial Board holding that the presumptions of Section 21 of the Workmen's Compensation Law of New York against suicide had been overcome, rescinded the award and disallowed the claim. The appellate Division unanimously affirmed the denial.

In the case of *Joseph* v. *United Kimono Company*, 194 N. Y. App. Div. 568, 185 N. Y. Supp. 700, decided in 1921, the deceased employee went from a part of the plant where he worked to an open window of an unoccupied room, and was soon afterwards found on the sidewalk several floors beneath barely breathing. It was proved that he died within a few minutes after being found and it further appeared in view of the height above the floor and depth of the window, that he could not have accidently fallen but was either bent on suicide or crazed with a pain in the head from which he was then suffering. An award of compensation in favor of his widow was set aside and the claim dismissed. The Court held that upon no reasonable construction could the casualty be brought within the meaning of the term "accident", saying:

> "It might be reasoned that the deceased, in a crazed condition caused by the pains in his head, had rushed to the window and thrown himself therefrom. If there were the fact, then either the deceased consciously intended to commit suicide, or if temporarily insane, was impelled to throw himself from the window by causes not attributable to his employment so that in either case could there be recovery."

The Court of Appeals of the State of New York on March 12th, 1935, affirmed a decision of the State Industrial Board in the case of *Dubinsky* v. *Kofsky & Gilman*, reversing 242 App. Div. N. Y. page 342, without opinion. This case is reported in Volume 14 Industrial Bulletin N. Y., page 78 — N. Y. —. The facts in this case were as follows: The em-

ployers, Kofsky & Gilman, conducted a tailor shop on the forty-second floor of a New York City building. On the same floor was a fire tower room in which their employees sometimes waited for the opening of the shop which occurred anywhere from 7 a.m. to 7:30 a.m. At about 6:45 a.m., on September 26, 1932, the employee, Dubinsky, forty-six years old and usually earliest to arrive, ascended the elevator. At 7:30 a.m. someone heard the thud of his body, as it struck the roof of an adjoining building far below. There were no eye witnesses to his fall. It evidently occurred from an unencased opening in the fire tower. An iron bar stretched across the opening. Upon claim of his widow for benefits, the death referee held from all of the circumstances that he jumped out of the opening. The Industrial Board denied benefits to the widow. Upon appeal, her attorney contended that the tower was connected with the employment as a waiting place and that the presumptions of Par. 21 of the Workmen's Compensation Law entitled her to an award. The Appellate Division, on November 12, 1934, reversed the Board's decision and remitted the claim with opinion holding that the fire tower was part of the employer's premises because it was the employees' only available waiting place, that waiting for work to begin was in line of duty, and that the presumptions against suicide had not been overcome, but on January 11, 1935, granted a motion for leave to appeal to the Court of Appeals and certified to it as questions of law: "1. Is the decision of the State Industrial Board dismissing the claim supported by the evidence? 2. Did the decedent meet with an accident which arose out of and in the course of the employment?" The Court of Appeals, answering the first question in the affirmative and not answering the second, reversed the Appellate Division's order and affirmed the decision of the State Industrial Board.

## CONCLUSION.

It is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that a rule of law heretofore expressed by this Honorable Court as set forth in decisions above quoted, may not be departed from by the lower Court, and that to such an end a writ of certiorari should be granted, and that this Honorable Court should review the decision of the United States Court of Appeals of the District of Columbia in this case and finally reverse it.

Respectfully submitted,

JAMES E. MCCABE,
*Attorney for Petitioners D. Del Vecchio, trading as Peoples Hardware Stores, and Merchants Mutual Casualty Company, a corporation.*

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Supreme Court
JUN 21 19

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

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# No. 37

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D. DEL VECCHIO, TRADING AS PEOPLES HARDWARE STORES AND MERCHANTS MUTUAL CASUALTY COMPANY, A CORPORATION,

*Petitioners,*

*vs.*

BONNIE L. BOWERS.

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## BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

---

CHAPIN B. BAUMAN,
JOHN H. BURNETT,
*Attorneys for Respondent.*

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

# No. 37

D. DEL VECCHIO, TRADING AS PEOPLES HARDWARE STORES AND MERCHANTS MUTUAL CASUALTY COMPANY, A CORPORATION,

*Petitioners,*

*vs.*

BONNIE L. BOWERS.

## Opinion of the Court Below.

The opinion of the United States Court of Appeals for the District of Columbia, appears on the record, pp. 168-171.

## Jurisdiction.

The judgment sought to be reviewed was entered March 11th, 1935 (R. 171). The Petition for Writ of Certiorari was filed May 1, 1935. Petitioner invokes the jurisdiction of the court under Section 240 (a) of the Judicial Code, as amended by the Act of February 13th, 1925. (28 U. S. C. Sec. 347, 43 Stat. 938.)

## Statute Involved.

Tit. 33 U. S. C. Sec. 920 (Longshoremen's and Harbor Workers' Compensation Act, made applicable to the District of Columbia, 45 Stat. 600):

> "In any proceedings for the enforcement of a claim for compensation under this chapter it shall be presumed in the absence of substantial evidence to the contrary . . .
>
> (D) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another."

## Question Presented.

The substance of the question petitioners present is:

Did the facts presented before the Deputy Commissioner on behalf of the petitioners overcome the presumption of accidental death of respondent's decedent?

The answer to this question is a matter of law solely.

The Court of Appeals decided that there was no "substantial evidence" presented before the Deputy Commissioner sufficient to overcome the presumption that respondent's decedent did not kill himself.

This is in accordance with the decision of this Court in *Int. Com. Comm.* v. *L. & R. R.*, 227 U. S. 88, 92, where the Court held that findings of fact by that Commission could be set aside when:

> "for any reason, the order is contrary to law."

The case at bar does not differ from the principles asserted in *Crowell* v. *Benson*, 285 U. S. 22.

The Court of Appeals took action similar to that of the case at bar in *New Amsterdam Cas. Co.* v. *Hoage*, 61 App. D. C. 306, 308 and this Court denied a Writ of Certiorari, 288 U. S. 608.

Respondent submits that petitioner has failed to state adequate reasons for granting the Petition under the standard set forth in Rule 38, Sec. 5 (c) of this Court.

The above statute involved a re-enactment of the common law. Respondent believes that an examination of the facts in the light of cases cited by petitioners will disclose that, except as any case will present facts differing in minor respects from the facts of cases previously decided, this case does not present any question which has not been settled by decision of this Court; nor is it an instance of failure on the part of the Court of Appeals to give proper effect to any applicable decision of this Court.

## Statement of the Case.

Bonnie L. Bowers, respondent, filed a bill for mandatory injunction to set aside a denial of an award of compensation for the death of her husband (R. 1-10). The defendants were Robert J. Hoage, Deputy Commissioner, and the petitioners, D. Del Vecchio, trading as Peoples Hardware Stores, the deceased's employer and the Merchants Mutual Casualty Company, the employer's insurer.

The petitioners filed a Motion to Dismiss the bill (R. 10, 22), which was granted (R. 164). From the decree dismissing the bill respondent appealed, and the case was reversed and remanded.

This case was before the Court of Appeals once before—*Del Vecchio et al. v. Bowers*, 62 App. D. C. 327. In that case, the Court decided that deceased met his death in the course of his employment, but remanded the case to the Deputy Commissioner for a Finding on the question of whether or not the deceased met his death by accident or suicide. That judgment has become final.

The only question before the Court of Appeals and before this Court was and is—Did the facts presented by the peti-

tioners overcome the presumption of accidental death? That is purely a question of law.

When this case came before the Deputy Commissioner after the opinion of the Court of Appeals in *Del Vecchio et al.* v. *Bowers, supra*, the Deputy Commissioner took no further testimony, but considered only the testimony that had been before him in the prior hearing, as it appears in the stenographic transcript of the testimony set forth in the transcript of record in this case. (Such transcript is the same as appeared in the Record in *Del Vecchio et al.* v. *Bowers, supra*, No. 5809.)

The Deputy Commissioner found "That the employee, Jeff Bowers (respondent's deceased husband), * * * came to his death by a gun shot wound of the chest by his own hand, as a result of willful intent on his part to injure or kill himself, and that said injury and death, therefore, while arising in the course of his employment, did not arise out of the employment; that in accordance with Section 3(b) of the Act, no compensation is payable" (R. 6-7).

It was the contention of respondent that there was no evidence before the Deputy Commissioner on which such a finding could be based.

Respondent asked the Court of Appeals to decide whether the presumption against suicide, both statutory and common law, accompanied by the evidence offered by appellant was overcome by "substantial" evidence offered by the employer and insurer who "controverted" their liability for compensation and asserted that deceased was a suicide.

The lower court based its judgment on both the bill of complaint and the testimony before the Deputy Commissioner. It therefore is necessary to advise this Court of such testimony.

Jeff Bowers, deceased, left surviving him a widow, Bonnie L. Bowers, respondent, and an infant son, one year and

seven months of age (R. 26-27). The deceased, an employee of Peoples Hardware Stores was paid $30.00 per week and commission. His income for the year preceding his death was $1,783.86, an average of $4.30 per week commission (R. 25).

Mr. Bowers was found dead at 10:15 A. M. on September 15th, 1931, with a gun shot wound in his chest, about two inches above the heart, at the store of which he was manager, located at 1311 Seventh Street, N. W.

Mrs. Bonnie L. Bowers, on behalf of herself as claimant, testified that she was the widow of Jeff Bowers. She and Mr. Bowers resided at 3203 Perry Street, Mt. Ranier, Maryland (R. 42). Mr. Bowers was employed at 1311 Seventh Street, N. W. (R. 43). When Mr. Bowers first went to work at the Seventh Street store he took a pistol with him and kept it there. The state of his health immediately before death was good (R. 45). On the morning of his death, Mr. Bowers ate his breakfast as usual. He had not been complaining of anything, and had had no financial worries. "We did not have anything like that and we did not have any debts we could not pay; we had enough to cover expenses" (R. 46). "He did not owe any debts but the car and Doctor. There was $20.00 on my Doctor's bill." The payments on the car were $36.00 per month (R. 48), and a balance of $140.00 was owed (R. 46). The rent of the home was $25.00 per month, and that was paid to date. The Doctor's bill and the automobile payments constituted the entire indebtedness of decedent (R. 46-47).

A letter written by Mr. Bowers was admitted in evidence. The letter was dated September 9th, 1931, the day before Mr. Bowers' death. It had been mailed on the morning of Mr. Bowers' death, according to the post mark on the envelope (R. 142). The letter was as follows (R. 143):

"Wednesday night, Sept. 9th, 1931.

DEAR MOTHER:

Will try and answer your letter received before you left Mich. Guess you thought I wasn't going to answer, but I haven't been feeling so good. Sure hope these few lines will find you well. This leaves us very well. How did you make your trip back home? Fine, I hope. How are the rest of the family? By now, fine, though, I guess. Sure was glad to hear, Annie, Jim and Jessie's baby was almost well. Hope he will continue to improve. Albert is fine and mean as ever and his eyes swell up but is now better. How are times down there? Well, though, I guess. Sure hope you enjoy your trip to Mich. Was very sorry I didn't get to go up there while you was there. I didn't see hardly how we could drive over those mountains. Sure got me last year when we went to Akron. Guess you feel better since you got back home. How did you like Dan? You wrote and asked me what I thought of them. I think they both are nice men. I like them both. Dan looks like a kid to me. Excuse me for not writing sooner. Won't wait so long next time. Answer soon in long letter. May God bless you, from

Jeff, Bonnie, Albert."

MR. BENJAMIN A. DUNN testified that he was a brother of Mrs. Bowers and worked for Mr. Del Vecchio, who traded as Peoples Hardware Stores (R. 48). He had worked at the Seventh Street Store where Mr. Bowers was found dead and kept a gun there constantly, because the neighborhood was dangerous (R. 49). He knew Mr. Bowers intimately and saw him frequently. His disposition was cheerful. Witness' family and deceased's family visited each other. Mr. and Mrs. Bowers' domestic relations were all right (R. 50-51). They seemed "jolly, loving and affectionate", Mr. Bowers was "always the life of the party anywhere we were". This was true up to the time of his death, there was no change. Mr. Bowers had money in the bank and owed a little on his automobile.

He "had more money in the bank that would take to cover any of his indebtedness. I know the exact amount he had in the bank. I know it was several hundred dollars (R. 51). Witness knew Mr. Bowers had trouble with his ear but never heard deceased make any complaint about it (R. 52).

Mr. Hiram Kent Dunn, a brother of Mrs. Bowers, stated that he also worked for Mr. Del Vecchio and with Mr. Bowers at the Seventh Street Store (R. 55). Mr. Dunn "always thought he (Mr. Bowers) was always jolly; he did not seem like he was worried about anything". Mr. Bowers never seemed melancholy or despondent; he and his wife got along all right (R. 57). The gun that was found at the time Mr. Bowers was shot was his gun. It was kept in a holster in the drawer most of the time. Mr. Dunn was the first person to open the drawer where the gun was found (R. 58). It was out of the holster (R. 59). The store had a counter and an aisle back of it for the clerks. The drawer where the gun was found was near the cash register (R. 60), and right underneath the counter (R. 61). The muzzle of the gun was pointing toward the aisle which the clerks used. The drawer was a usual drawer found beneath a counter and at the rear of the store (R. 61). There were a couple of drops of blood in the drawer (R. 62).

Mr. John Hoffman knew Mr. Bowers for 1½ years before his death. Around 10:00 or 10:15 A. M. of the day of Mr. Bowers' death, he went into the Seventh Street Store to inquire the price of metallic oil and to find out how many gallons he needed (R. 64). Mr. Bowers was waiting on a customer and asked witness to wait a ...nute (R. 64-65). When Mr. Bowers finished with the customers he told witness someone had broken into the warehouse in back of the store, and wanted witness, who was a car-

penter, to fix it. Witness saw the place that was broken open and described it (R. 65). Witness was instructed how to repair the broken place by Mr. Bowers. Mr. Hoffman started on his repair work and while so engaged "heard a noise like a bulb had blown out, or a fuse and a noise like someone was in agony, hollering "Oh, oh", and I came on in and Mr. Bowers was laying in the aisleway and with his feet at the end of the counter at an angle like he was going to walk across the aisle instead of straight down the aisle (R. 66). (Sketches of the store are found at pp. 156A, 156B of the record.) Mr. Bowers' body was laying between the two counters running lengthwise of the store. He had apparently been shot while behind the counter and had come out, turned to his left and fallen with his head to the front of the store (R. 67-68). Mr. Bowers "was always jolly and cutting up" in the store. On the morning of his death he was the same as always. He did not seem despondent or melancholy on that day or the day before (R. 70). The reason witness did not hear a shot, he was in a room shut off from deceased, hammering (R. 74).

Mr. Samuel Del Vecchio stated that the manager of the Seventh Street Store who preceded Mr. Bowers, kept guns (R. 79). Mr. Bowers' accounts were in perfect condition, and had been so always (R. 79). Mr. Bowers "seemed to be very healthy and in good condition. He had had an operation on his ear and was permitted to leave the store to have his ear treated from time to time. Mr. Bowers "was well liked by all the customers, very jolly and he was a southern boy and he was so good, and he cracked jokes with everyone, and everyone liked him, and he increased the business of the store tremendously through his personality. He had a splendid personality. There was never any change in his disposition; "he was always

cheery and jolly" (R. 80). Mr. Del Vecchio did not give Mr. Bowers permission to keep a gun in the store, but "if he had asked, I certainly would have given it" (R. 82). It was customary for the managers of that particular store to have a gun there (R. 85).

MR. JOHN W. SHAVER lived in the same neighborhood as Mr. Bowers for four years and for one year or more of this time they lived next door to each other. He knew the Bowers family intimately. The families visited each other frequently. He saw Mr. Bowers practically every day (R. 120). Mr. Bowers was "bright, sunny, cheerful. I never knew him to be anything else." Deceased talked to Shaver from time to time; the last time, the evening before his death. Between 7 and 8 o'clock on the night before deceased's death, deceased came into witness' cellar, where there was a workshop, and talked "and laughed and joked and just had generally a good time" (R. 121). On that occasion Mr. Shaver requested deceased to bring him a pound of nails and three cans of paint from the hardware store of which deceased was manager. Deceased promised so to do. The general appearance, attitude and disposition of deceased was that he "was just about as happy and contented" as witness was. Mr. Shaver never knew deceased to be melancholy, depressed or downhearted. Mr. and Mrs. Bowers were "absolutely agreeable and happy." Deceased "thought the world" of his little son (R. 122). Deceased never complained to Mr. Shaver of any ailment (R. 125-6).

MRS. MARIETTA SHAVER had known deceased four years (R. 127). The Bowers family and the Shaver family went riding together, played tennis and croquet and visited each other frequently—four or five times a week (R. 127-8). Mr. Bowers died on the Thursday following Labor Day. On the latter date Mr. and Mrs. Bowers and Mr. and Mrs.

Shaver played tennis and croquet all afternoon. The disposition of deceased was "very happy; he was always smiling" (R. 128). Mr. and Mrs. Bowers "were very happy." Mr. Bowers was "just as fond as any father could be of the little fellow (his son), and the little fellow was crazy about his daddy" (R. 129). On the morning of Mr. Bowers' death, Mrs. Shaver heard "the machine when he came out to pick up a neighbor, I could hear him laughing" (R. 129). Mr. Bowers "never mentioned any trouble about his ear, only to say he may, some day, have to be operated on." He never did say he had any headaches, but witness knew "he did not have much trouble as far as she knew" (R. 130).

Mr. Odus Eiland lived about three blocks from Mr. Bowers, whom he had known for about ten years. They had been friends and visited their respective homes (R. 131-2). Mr. Bowers never appeared despondent or depressed. On the Sunday before his death, witness and deceased were at a Mr. Dunn's home, where they had ice cream and cake (R. 132) and Mr. Bowers "was the life of the party; he was cheerful as he could be, and jolly." Mr. and Mrs. Bowers got "along as well as any couple could; I never knew of any disagreements between the two." Mr. Bowers was "very fond of his child" (R. 133). Mr. Eiland saw Mr. Bowers from "one to three or four times a week from June until September, either at the Bowers or Eiland residence, or at the homes of friends. Mr. Bowers never mentioned any trouble with his ear (R. 134). Mr. Bowers never had headaches as a result of the condition of his ear within a year before his death, although deceased had had headaches before that time (R. 135). Mr. Bowers never spoke to witness of the necessity of an operation upon his ear (R. 136).

Mr. David Eiland had known Mr. Bowers all of his life and since he had married he "knew him very well" (R.

136). He had visited the Bowers' home and had worked for Mr. Bowers for eight or ten months at the Peoples Hardware Store at 18th and Columbia Road (R. 137). Mr. Bowers "never worried about anything." He was "cheerful, always." That condition continued until the last time witness saw Mr. Bowers, which was the Sunday preceding his death, at Mr. Dunn's, where Mr. Bowers made more fun than anyone else did." Mr. and Mrs. Bowers were "very happy" together (R. 138). Mr. Eiland "for the last four years" had "been around" Mr. Bowers "every day you might say, almost." They both worked at Peoples Hardware Stores (R. 139).

This comprised the testimony of the claimant. The respondents, Del Vecchio and the Insurance Company, who had "controverted" the claim for compensation then sought to prove Mr. Bowers a suicide.

Dr. James A. Smart was a graduate physician, specializing in the diseases of the ear, nose and throat. He was the attending physician of Mr. Bowers prior to his death (R. 29). Mr. Bowers first consulted the Doctor on August 24th, 1931. Dr. Smart was told by Mr. Bowers that deceased had had an operation on his left ear told in November, 1928, and since that time deceased had had a discharge from his left ear. Two months prior to his consultation Mr. Bowers had pain in his left ear (R. 30). The pain in the ear bothered Mr. Bowers at night; he could not sleep much. The examination disclosed a healed wound in the back of the left ear, and there was no discharge there. In the canal of that ear there was some pus having a very foul odor. The drum of the ear was gone and there was some granulation tissue present in the middle ear, which latter indicated a severe infection in the middle ear at that time (R. 31). The condition found in Mr. Bowers' ear very

often caused severe pain but also, quite often, there is no pain present at all. Dr. Smart supposed Mr. Bowers took the pain to be a headache. After the examination Mr. Bowers "did not seem particularly alarmed about his ear." Mr. Bowers informed the doctor that he was unable to pay for medical attention (R. 32). Whereupon the doctor, who was on the staff of the Episcopal Eye, Ear, Nose and Throat Hospital, sent him to the clinic in that hospital, where the doctor would see that he got an examination and as much treatment as is necessary without it costing you an awful price." The doctor saw Mr. Bowers several times at the hospital clinic. The patient was told that if the discharge in the ear persisted, an operation would be necessary, but he was not definitely told that there was another operation in prospect (R. 33). August 29th, 1931, was the last date Mr. Bowers received treatment for his ear (R. 38). It is possible that the ear had responded to treatment after that (R. 40). The treatment of the ear consisted of trying to find out what type of germ was causing the infection, the administration of antiseptic, the removal of the granulated tissue, sometimes cauterizing the middle ear and sometimes administering antiseptic powder, sometimes treating the nose and the administration of tonic and vaccine. The doctor could not say that the condition of Mr. Bowers was an aggravation to his nervous system. It could well be the source of great worry to him. It could have aggravated his nervous system (R. 41). Mr. Bowers "did not seem very worried about his ear." The doctor "could not say that he impressed me as being at all depressed" (R. 116). Mr. Bowers consulted the doctor "simply because it (the ear) was commencing to pain him" (R. 117).

Detective Sergeant Floyd A. Truscott was a member of the Metropolitan Police Force. He first saw Mr. Bowers'

body at Casualty Hospital. There he saw one wound in the front of the chest and one in back. The front wound was about two inches to the left of the midline and toward the left nipple. The wound in the back was closer to the midline or spine than the one in front (R. 88). The bullet had penetrated some paint cans opposite a drawer in the counter. The gun was found in the drawer (R. 89), the muzzle pointing toward the direction in which the drawer opened. The drawer was not entirely closed, but flush with the counter. The holster in the drawer lay in the opposite direction to the gun (R. 90). The "line of fire" of the gun could not be exactly determined. The bullet in the paint cans was a .32 caliber and about the height that it "would be in the man." The bullet took a level course. The shell was by the counter, toward the front of the store in some trays, about 12 feet distant. The gun was a .32 colt automatic and will throw a shell that distance. Such a gun ejects shells to its right, and if pointed at Bowers would have thrown the shell in that direction (R. 91). The ballistic tests showed the bullet and shell were fired through and in Mr. Bowers' gun (R. 92). There was blood on Mr. Bowers' shirt and something that looked like powder marks. Powder from a shell will stain at a distance of about 12 inches. From a .32 colt automatic at 12 inches the powder marks will be spattered covering an area about 3½ inches in diameter (R. 94). The stain on Mr. Bowers' shirt was very small in diameter, indicating the gun was fired at "practically point blank range" (R. 95). The gun could "go off" while you were taking out the magazine if your finger was on the trigger (R. 100).

Dr. Edwin Donaldson was the Police Department chemist and had training in powder marks on clothing, but only as to identification of the stain. He investigated the cause

of the stains on Mr. Bowers' shirts (R. 103). The top shirt contained particles of unburned powder above the upper right hand corner of the pocket. No powder stains were visible on the undershirt (R. 104). Witness "would not want to qualify" on how far away the muzzle of the gun was from the shirt when the shot was fired. To estimate that you would have to know the caliber of the gun, the charge of powder and whether it was an automatic or a revolver. Witness did not know all of these things. However, he said the gun, when fired, was approximately at a distance of two or three inches from the shirt. Mr. Bowers' shirt was charred, indicating the muzzle of the gun was not more than four or five inches distant therefrom when fired (R. 105). When a gun is fired at close contact, there is a small area of powder marks; "that area grows larger to a certain point and then recedes again" (R. 107).

Mrs. Thomas P. Mobley was waiting for Mr. Bowers to open the Seventh Street Store on the morning of his death. She went in to make a purchase (R. 108). She always talked to Mr. Bowers and "he always seemed to be a fellow that really enjoyed life some; more like he had everything to live for" (R. 109).

The testimony of Dr. Joseph D. Rogers was stipulated to be as follows: He performed an autopsy on Mr. Bowers who was about thirty years old, height 6 feet, weight 175 to 187 pounds. There was a bullet wound of entrance 3½ inches from the mid-line and 1½ inches above the left nipple, going through the chest, at about the same level, coming out 1½ inches from the left of the spine. There were eight small marks about the wound indicating powder burns. Death was due to a gunshot wound, hemorrhage and shock. The shot could have been fired by Mr. Bowers (R. 113). The bullet did not puncture the heart; it punctured the lung.

The wound was not such as to cause immediate death. Mr. Bowers could have moved after the shot took effect. He could have taken three or four steps. Mr. Bowers could have walked out from behind the counter after the shot (R. 114).

It was stipulated that the bullet from Mr. Bowers' gun was the cause of death (R. 146).

Detective Sergeant John C. Dalglish, of the Metropolitan Police, investigated the death of Jeff Bowers. He went to the Seventh Street store and the body had been removed when he arrived. (R. 147). The pistol was found in a drawer pointing to the back and behind a leather holster. The bullet was found in a can of paint (R. 148). He saw no evidence of cleaning a gun behind the counter (R. 149).

The testimony of Police Officer John B. Monroe for the petitioners was stipulated to be as follows: He was in a radio car and in response to directions went to the Seventh Street store where he saw the body of Mr. Bowers. It was in the rear of the store, face down, approximately at the end of the counter, where the cash register sets (R. 152).

## ARGUMENT.

There is no question before this Court as to whether the deceased met his death by reason of an injury arising out of and occurring in the course of his employment.

That question was finally decided in favor of the respondent in the first appeal of this case (*Del Vecchio et al.* v. *Bowers*, 62 App. D. C. 327).

The only question before this Court is—Do the facts offered by petitioners before the Deputy Commissioner show the respondent's intestate to have been a suicide because such facts legally constitute "substantial evidence" sufficient to overcome the presumption of accidental death?

The respondent contends that as the statute (33 U. S. C. Sec. 920) provides that "substantial evidence" must be produced to overcome the presumption of accidental death, the Court of Appeals had a right to declare the evidence in this case to be of such character as to fail to support the Deputy Commissioner's findings.

Such action is not a disturbance of the Deputy Commissioner's findings of any one or all facts. It is a conclusion based on law and statutes that the facts produced were not of the kind or character as required by law or statute.

The Court of Appeals held that the finding of the Deputy Commissioner was not in accordance with the law. This does not constitute any novel proposition of law. It is as old as the compensation law itself.

After respondent filed her claim with the Deputy Commissioner, the employer and the insurance company "controverted" the claim and asserted that the claimant's deceased committed suicide (R. 27).

The issue before the Deputy Commissioner was whether deceased's death was accident or suicide. The claimant, appellant here, made out a case of accidental death and there was no "substantial evidence to the contrary." Indeed, there was no evidence of suicide whatsoever.

It is settled law that if there is any substantial evidence upon which a finding of a compensation commissioner can rest, such finding will stand. But such finding will not stand if it rests on surmise, conjecture or speculation.

*Liberty Mutual Ins. Co.* v. *Hoage*, 62 App. D. C. 189, 190;
*Powell* v. *Hoage*, 61 App. D. C. 99, 100;
*In re Sanderson's case*, 224 Mass. 558, 561, 113 N. E. 355;
*In re Gorski*, 227 Mass. 456, 459, 116 N. E. 811;
*Legala* v. *Jazek*, 170 Wis. 532, 536, 175 N. W. 87, 176 N. W. 238.

In New York the Compensation Statute (Sec. 68) provides that the rules of evidence of common law or statutory law shall not be binding upon the commissioner. It is verbatim the same as the first sentence in Sec. 23 (Tit. 33 U. S. C. Sec. 923).

In *Carroll* v. *Knickerbocker Ice Co.*, 218 N. Y., 435, 440, (113 N. E. 507), the court said that notwithstanding this provision:

> "There must be in the record some evidence of a sound, competent and recognizedly probative character to sustain the findings and award made, else the findings and the award must in fairness be set aside by (the) Court."

**There is a Presumption Against Suicide.**

It is settled law that there is a presumption against suicide. *Met. L. Ins. Co.* v. *Hogan* (C. C. A.) 63 F. (2) 654; *Wishcalless* v. *Hammond-Standish & Co.*, 201 Mich. 192, 166 N. W. 993; *Mass. Protective Assn.* v. *Cranford*, 137 Miss. 876, 102 So. 171; *Prentiss* v. *Ill. Life Ins. Co.*, (Mo.) 225 S. W. 695.

Where a person is found dead, the presumptions are that death was natural or accidental, in the absence of insanity, and suicide will not be presumed. *N. Y. Life Ins. Co.* v. *Turner*, 213 Ala. 286, 104 So. 643; *Manziano* v. *Pub. Service Gas. Co.*, 92 N. J. L. 322, 105 At. 484.

Where death may have resulted from suicide or accident, it will be presumed that it resulted from accident. *Postler* v. *Travellers Ins. Co.*, 173 Cal. 1, 158 Pac. 1022; *Wishcalless* v. *Hammond, Standish & Co., supra.*

The burden to prove suicide is on the one asserting it. *Travellers Ins. Co.* v. *Allen*, (C. C. A. 8) 237 Fed. 78, 150 C. C. A. 280; *DeBruen* v. *City of Bayard*, 124 Neb. 566, 247 N. W. 347.

The presumption against suicide stands until overthrown. *Guardian L. Ins. Co.* v. *Dixon*, 152 Ark. 597, 240 S. W. 25.

In *Wilkinson* v. *Stand. Acc. Ins. Co.*, 180 Cal. 252, (208 Pac. 607), in speaking of the presumption of accident rather than suicide, said, p. 256:

> "The contention that there is no such presumption (of accident) in this state cannot be sustained. This presumption necessarily and logically follows from statutory presumption 'that a person is innocent of crime or wrong.' (Code Civ. Proc. Sec. 1963, subd. 1; *Jenkin* v. *Pac. Mut. L. Ins. Co.*, 131 Cal. 121, 63 Pac. 780."

The presumption that death is due to accident and not to suicide applies to compensation cases. 5 A. L. R. 1680 (cases cited).

In *Manley* v. *Harvey Lumber Co.*, 175 Minn. 489, (221 N. W. 913) a finding by Industrial Commission denying compensation was reversed. The deceased used his automobile in his employer's business. On going to his garage to get the car, he was killed by monoxide gas. He was found in the garage with the engine of his car running. The court said 491:

> "This court has uniformly held that where the commission as the trier of the fact has a choice between conflicting evidence or diverse inferences may be drawn from the evidence, its conclusions should stand. *Smith* v. *Mason Brothers Co.*, 174 Minn. 94, 218 N. W. 243. If, however, the conclusions reached by the commission are manifestly and clearly contrary to the evidence, they cannot stand. *Campbell* v. *Nelson*, 175 Minn. 51, 220 N. W. 401.
>
> "* * * From the evidence, it is certain that Manley went to the garage for the purpose of starting out with his car on a collection trip into the country on his employer's business. He had started the motor for this purpose. The placing of a spare tire on the car was a proper and necessary precaution for the work

intended. The tools found were usually used for that purpose. The accident arose out of and in the course of his employment."

"The suggestion made in respondent's brief that it might have been a case of suicide finds no support in the record. Furthermore, the presumption is to the contrary. *State ex rel Oliver Iron Mining Co.* v. *Dist. Court,* 138 Minn. 138, 164 N. W. 582."

Section 20 of the compensation act is a re-statement of the common law.

It is respectfully submitted that the very best that can be said for petitioners' case is that the evidence of suicide or accident balance. In such event, the courts must find in favor of accident. *Milwaukee Fuel Co.* v. *Indus. Com.,* 159 Wis. 635, 644, 150 Nev. 998, 1000; *Oliver Iron Mining Co.* v. *Dist. Court,* 138 Minn. 138, 140, 164 Nev. 582, 583; *Travellers Ins. Co.* v. *McConkey,* 127 U. S. 661, 667; *Standard L. & Acc. Ins. Co.* v. *Thornton,* (C. C. A. 6) 100 F. 582, 587.

Suicide will not be presumed from a violent death. *St. Louis Ins. Co.* v. *Roper* (C. C. A. 5), 44 F. (2d) 897, 898; *Standard Acc. Ins. Co.* v. *Kiker,* 45 Ga. App. 706, 165 S. E. 850, 851.

The presumption of accident must be overcome by evidence. *Milwaukee Fuel Co.* v. *Indus. Com.,* 159 Wis. 635, 645, 150 N. W. 998; *Wilkinson* v. *Aetna L. Ins. Co.,* 240 Ill. 205, 212, 214, 88 N. E. 550, 25 L. R. A., N. S., 1256, 130 A. J. R. 269.

The compensation commissioner is by law required to follow this rule. *Bekkedal L. Co.* v. *Indus. Com.,* 168 Wis. 230, 233, 169 N. W. 561.

The petitioner had the burden of proving suicide and had to produce evidence sufficient to overcome the presumption of accidental death. *Measha Woodmen Co.* v. *Indus. Com.,* 187 Wis. 21, 22, 203 N. W. 906; *N. Y. Life Ins. Co.* v. *Brown* (C. C. A. 5), 39 F. (2d) 376, 378.

Even though there is direct evidence that death followed from the infliction of a wound from a weapon found in the hand of decedent, such evidence does not overcome the presumption of accident. *Mutual L. Ins. Co.* v. *Hatten* (C. C. A. 8), 17 F. (2d) 889, 890; *Farmer's Grain & Sup. Co.* v. *Blanchard*, 104 Neb. 637, 640, 178 N. W. 257; *Sparks Milling Co.* v. *Indus. Com.*, 293 Ill. 350, 353, 127 N. E. 37; *Westman's Case*, 118 Ne. 133, 140, 100 At. 532; *Mut. L. Ins. Co.* v. *Ford* (Tex. Ct. App.), 130 S. W. 769, 778; *So. Atl. Ins. Co.* v. *Hurt*, 115 Va. 398, 401, 79 S. E. 401.

In this class of case, it is presumed that if decedent could speak, "he would give a reasonably satisfactory account of himself as to the matters which might not otherwise be understood." *O'Sullivan* v. *A. Howards Theatre Co.*, 187 N. Y. S. 64, 66, 195 App. Div. 609; *Graff* v. *Art Color Printing Co.*, 191 App. Div. 69, 181 N. Y. S. 707; *Mullen* v. *Schenectady Rwy. Co.*, 214 N. Y. 300, 305, 108 N. E. 412.

There was no duty on respondent "to negative the possibility of suicide." *Rideout Co.* v. *Pillsbury*, 173 Cal. 132, 134, 159 Pac. 435, 436.

Before the Court can determine that the evidence proved suicide, there must be more than an inference to support that theory. The "Evidence must compel the inference" of suicide in order for the Court to say that deceased was a suicide. *Simmons Co.* v. *Indus. Com.*, 211 Wis. 445, 448, 248 N. W. 443.

In a compensation case, where the evidence shows that deceased "was in good health and possessed of his faculties; 'he was smart'; generally faithful, considerably experienced; and possessed of knowledge of perils," etc., such evidence "precludes, *inter alia*, mere inference of suicide". *Malley* v. *Union Indem. Co.* (Tex. Com. App.), 12 S. W. (2d) 1002, 1005.

"Mere suspicion cannot be made the basis for a judicial pronouncement that such (suicide) was the fact." *Hershey* v. *Agnew*, 83 Colo. 89, 93, 267 Pac. 526.

There must be "clear proof" of suicide. *Silva* v. *Fid. & Cas. Co.*, 272 Mass. 328, 330, 147 N. E. 858.

Every reasonable hypothesis of accident must be excluded. *Beers* v. *Calif. St. L. Ins. Co.*, 87 Cal. App. 440, 226 Pac. 380, 392; *Goodbar* v. *L. Ins. Co.*, 89 W. Va. 221, 226, 108 S. E. 896.

The rule as to the sufficiency of evidence to overcome the presumption of accident is different in different States. Whatever the rule is in any of the following jurisdictions, the petitioners did not meet it in this case.

In Virginia, to overcome the presumption of accident, the evidence of suicide must be such as to overcome the presumption of innocence. *Mut. Ins. Co.* v. *Marshall*, 157 Va. 427, 429, 161 S. E. 61; *Life Ins. Co.* v. *Hairston*, 108 Va. 852, 62 S. E. 1057, 1066, 128 A. L. R. 989; *So. Atl. Ins. Co.* v. *Hurt*, 115 Va. 398, 401, 79 S. E. 401.

This rule is followed in the 4th Circuit Court of Appeals: *Tabor* v. *Mut. L. Ins. Co.*, 13 F. (2d) 765, 769; *Fed. Mut. L. Assn.* v. *Miller*, 92 F. 63, 70; *Parrish* v. *Order of United Com. Trav.*, 232 F. 425.

The rule in Minnesota requires a "fair preponderance" of the evidence to overcome the presumption of accident. *O'Conner* v. *Modern W. of A.*, 110 Minn. 18, 24, 124 N. W. 454; *Lindahl* v. *Sup. Ct. I. O. O. F.*, 100 Minn. 87, 96, 110 N. W. 358.

The "great preponderance" of the evidence is required before the presumption of accident is overcome in the courts of Missouri 152 Mo. App. 155, 166, 133 S. W. 153.

Where the evidence of suicide is circumstantial, the Missouri, Louisiana, Virginia and Illinois Courts require that such evidence must exclude any hypothesis of accident with

reasonable certainty. *Reynolds* v. *Casualty Co.*, 274 Mo. 83, 96, 201 S. W. 1128; *Faulk* v. *Mut. L. Ins. Co.*, 160 La. 529, 543, 107 So. 395; 46 La. 1189, 1520, 388, 24 L. R. A. 589, 49 A. L. R. 348; *So. Atl. Ins. Co.* v. *Hurt*, 115 Va. 398, 401, 79 S. E. 401; *Sweney* v. *N. W. Mut. L. Ins. Co.*, 251 Ind. App. 1, 24 *et seq.*

The proof of motive for suicide merely weakens the presumption against it, and is insufficient to establish suicide. *Sweney* v. *N. W. Mut. L. Ins. Co.*, 251 Ind. App. 1, 24.

Even if motive for suicide is proved and there are other circumstances in the case "probably indicating suicide", such evidence is insufficient to establish suicide if there is "equal probability that the death was accidental". *Mut. L. Ins. Co.* v. *Carroll* (C. C. A. 6) 17 F. (2d) 42, 43.

The statutory presumption of accident is binding on the Deputy Commissioner and on the courts. It is conclusive upon both. No evidence is required to prove accident. *J. F. Hardymon Co.* v. *Kaze*, 241 Ky. 252, 255, 43 S. W. (2) 678; *Peters* v. *Cal. Bldg. Loan Assn.*, 116 Cal. App. 143, 2 Pac. (2) 439, 442; *South* v. *Benjamin B. Wright Co.*, 250 N. Y. S. 56, 58, 232 App. Div. 343; *Matter of Shearer*, 242 N. Y. 73, 150 N. E. 604, 605; *Martin* v. *Sanatorium*, 200 N. C. 221, 225, 156 S. E. 849; *Employers L. Assurance Corp.* v. *Indus. Acc. Com.*, 92 Cal. App. 119, 267 Pac. 922, 924; *Elec. & P. Co.* v. *Place*, 150 Va. 562, 566, 143 S. E. 756; *Farmers G. & S. Co.* v. *Blanchard*, 104 Neb. 637, 178 N. W. 257; *Simmons* v. *Indus. Com.*, 211 Wis. 445, 448, 248 N. W. 443; *Rockwood Ala. Stone Co.* v. *Lawler*, 223 Ala. 336, 337, 135 So. 569; *Wise-Buchanan Coal Co.* v. *Ray*, 157 Okl. 197, 199, 17 Pac. (2) 360.

All of the pertinent facts in this case are undisputed:

1. Mr. Bowers was always jolly and fond of life (all of respondent's witnesses and two of petitioners' witnesses so testified).

2. Mr. Bowers had an ear infection which petitioners' doctor said did not seem to worry Mr. Bowers. He was not worried over his health.

3. Mr. Bowers had several hundred dollars in the bank and owed only $160.00.

4. Mr. Bowers' business accounts were in perfect order, and he was "building up" his commissions and income right along.

5. Mr. Bowers' family conditions were excellent and he was fond of his small son.

6. The night before his death Mr. Bowers promised to bring a neighbor some supplies on the night of the day he died.

7. The night before he died Mr. Bowers wrote to his mother saying he would not "wait so long (to write) next time" and asking his mother to "answer soon in a long letter". (This letter was evidently posted on the morning of his death.)

8. Mr. Bowers was not shot through the heart, but about two inches above it.

9. Mr. Bowers was shot by a bullet from his own pistol, which was kept in the store of which he was manager, for the protection of himself and his employer's goods.

Where the pertinent facts stand undisputed the rule is:

> "* * * The claimant is entitled to all reasonable inferences from such undisputed facts in support of her claim, as would be accorded to her upon a demurrer to her evidence. *Poccardi* v. *Public Service Commission*, 75 W. Va. 542, 84 S. E. 242; *Goble* v. *Compensation Commissioner*, 111 W. Va. 404, 162 S. E. 314; *Demastes* v. *Comp. Com'r*, 112 W. Va. 498, 501."

**Facts Disputed.**

Petitioners' brief, pp. 19, 20.

1. The impeachment of *one* of respondent's witnesses by proof that before the hearing he had said the deceased

was despondent and at the hearing, when under oath, said he was jolly, etc.

That is proof of no fact. It is admitted only to affect the credibility of the witness who was impeached.

Eight witnesses, including two called by petitioner (one of whom was the petitioner, Del Vecchio) supported respondent's contention that deceased was jolly, gay and very far from being depressed or despondent.

It is respectfully submitted that that is a mole-hill mountain.

2. The letter of deceased to his mother.

A reading of the letter as an entirety clearly shows it does not support petitioners' theory in the slightest.

**Conclusion.**

With respondent's evidence in the case, and the burden of proving suicide being on the petitioners, "Substantial evidence" there means evidence of enough weight to overcome the presumption of accidental death *and* respondent's evidence.

It is submitted that such "substantial evidence" is lacking and the Court of Appeals properly so ruled.

The Petition should be denied.

Respectfully submitted,

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JOHN H. BURNETT,
*Attorneys for Respondent.*

Service of copy acknowledged this 16th day of May, A. D. 1935.

JAMES E. MCCABE,
*Attorney for Petitioners.*

# SUPREME COURT OF THE UNITED STATES.

No. 37.—October Term, 1935.

D. Del Vecchio, et al., Petitioners, vs. Bonnie L. Bowers. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[December 9, 1935.]

Mr. Justice Roberts delivered the opinion of the Court.

This case involves the application of Sections 3 (b) and 20 (d) of the Longshoremen's and Harbor Workers' Compensation Act,[1] to the respondent's claim of compensation for the death of her husband, Jeff Bowers, who died from a bullet wound inflicted while he was on duty in Del Vecchio's store in the District of Columbia.[2]

Evidence adduced at the hearing before a Deputy Compensation Commissioner tended to establish the following facts. On the morning of September 10, 1931, Bowers discovered a broken fastening on a door leading into an alley in the rear of the premises and engaged a carpenter to make repairs. The latter, while so occupied, hearing a sound like the bursting of an electric light bulb, followed by groans, entered the store and found Bowers lying on the floor. Death ensued without recovery of consciousness. An automatic pistol, owned by the decedent, which he kept in a drawer under a counter, was found in the partly closed drawer. There was blood in the drawer and on the counter near it. The bullet had entered the chest about three and one-half inches to the left of the median line and one inch above the nipple, emerged from the back of the body approximately in line with the point of entrance, and lodged in a paint can on a shelf behind the drawer about five feet above the floor. The ejected shell lay some twelve feet to the left of the drawer where it would naturally fall if the decedent had stood in front of the drawer, between the counter and the shelf, and held the pistol in his right hand pointing at his chest. Ballistic

[1] March 4, 1927, c. 509; 44 Stat. 1424, 1426, 1436; U. S. C., Tit. 33, §§ 903 (b), 920 (d).

[2] The statute is made a workmen's compensation law for the District of Columbia by the Act of May 17, 1928, c. 612, 45 Stat. 600.

tests traced shell and bullet to the pistol. There were no identifiable fingerprints upon the weapon, but an indistinct print of the side of a finger was discernible. The front of Bowers' shirt bore grains of unburned powder which with the condition of the material about the hole in the garment indicated that the muzzle of the weapon had been held within two or three inches of the body. No rags or other material were discovered such as would suggest that Bowers was cleaning the pistol. The victim of such a wound could have taken the few steps from the place where the gun was found to that where his body lay.

The parties agree the injury was self-inflicted, but are in controversy as to whether it was accidental or intentional. According to the respondent's evidence, Bowers was in good health, of a happy disposition, and in good financial condition; his accounts were in order; on the evening before his death he had written to his mother a cheerful letter in which he stated he would soon write her again; and the same evening he had promised a friend to bring him from the store some goods which the friend desired to purchase. The petitioners adduced evidence that Bowers had suffered from an infection of the ear and undergone a mastoid operation; about ten days before his death he visited a specialist to whom he complained of pain in the ear and headaches which seemed to be increasing. He was advised another mastoid operation might be necessary and was sent to a hospital for an X-ray examination. He submitted to the examination, which disclosed the presence of pus in the middle ear, but did not thereafter return to the physician whom he had consulted.

The Deputy Commissioner denied an award of compensation, holding claimant had failed to establish that Bowers' duties required the use of a weapon and there was therefore no showing that his injury arose out of his employment. Upon a bill filed[3] the Supreme Court of the District set aside the order, holding the keeping of the pistol in the store, although unknown to the employer, was in furtherance of the latter's interest, the finding to the contrary was wholly unsupported, and the evidence tended to

[3]As provided by § 21 (b); U. S. C., Tit. 33, § 921 (b): "If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order . . . ."

prove the death was due to accident. The Court of Appeals concurred in the view that an award should not have been refused on the ground that the injury did not arise out of the employment; but as the case was tried on the theory of suicide, and the Deputy Commissioner had made no finding upon this issue, remanded the cause for further findings.[4]

The Deputy Commissioner reconsidered the case upon the record as originally made before him and, finding the death suicidal, again refused an award. The respondent then instituted the present proceeding to have this action set aside. The Supreme Court denied relief, but the Court of Appeals reversed,[5] declaring the finding of suicide not to be in accordance with law because, though the act withholds compensation where an employee willfully kills himself,[6] Section 20 (d) creates a presumption, in the absence of substantial evidence to the contrary, that the injury was not willfully inflicted.[7] The court found the evidence as consistent with accident as with suicide and said that in such circumstances the presumption required a finding in favor of the claimant; adding that whatever measure of proof may generally suffice to support other findings of a deputy commissioner, a finding of suicide, in the absence of substantial evidence, is not in accordance with law. Substantial evidence, said the court, must be such as to induce conviction and the evidence upon which the officer here acted did not reach that standard.

In the view that the case does not fall within Rule 38, the respondent opposed the issuance of a writ of certiorari. The objection might be valid if the statute were confined in its operation to the District of Columbia. We will not ordinarily review decisions of the United States Court of Appeals, which are based upon statutes so limited or which declare the common law of the District. The Longshoremen's and Harbor Workers' Compensation Act,

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[4] *Del Vecchio* v. *Bowers*, 67 F. (2d) 751.

[5] *Bowers* v. *Hoage, Deputy Commissioner*, 76 F. (2d) 996.

[6] Section 3 (b); U. S. C., Tit. 33, Section 903 (b): "No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another."

[7] Section 20 (d); U. S. C., Tit. 33, Section 920 (d): "In any proceedings for the enforcement of a claim for compensation . . . it shall be presumed, in the absence of substantial evidence to the contrary—(d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another."

however, is national in scope, and a decision with respect to its enforcement constitutes a precedent of general application. We therefore granted the writ because of the important question as to the effect of Section 20 (d).

We hold that the decision of the Deputy Commissioner should not have been annulled. The relevant substantive section of the act directs that no compensation shall be payable if the injury was occasioned by the willful intention of the employee to injure or kill himself; the adjective section creates a presumption that the injury was not so occasioned, in the absence of substantial evidence to the contrary. The question is whether, as the court below thought, the presumption has the quality of affirmative evidence. The answer must be that it has not.

When a trier of facts is to be persuaded of the truth of a disputed proposition, one or the other of the parties,—the proponent or the opponent,—has the burden of going forward with evidence. In the present instance, the fact that the wound was self-inflicted permits but one of two conclusions: either the decedent accidentally killed himself, or he committed suicide. Considerations of fairness and experience in human affairs induce fact finding bodies, where there is a balance of probability, to adopt a working assumption as the basis of a conclusion, unless and until the facts are developed by evidence.[8] The natural love of life, the comparative infrequency of suicide as contrasted with accident, and the likelihood that testimony as to the cause of death would be more readily available to the employer than to the claimant justify a presumption, which the law indulges in such a case, that the death was accidental.[9] The act under consideration, however, does not leave the matter to be determined by the general principles of law, but announces its own rule, to the effect that the claimant, in the absence of substantial evidence to the contrary, shall have the benefit of the presumption of accidental death. The employer must rebut this *prima facies*. The statement in the act that the evidence to overcome the effect of the presumption must be substantial adds nothing to the well understood principle

[8] Thayer, A Preliminary Treatise on Evidence at the Common Law, pp. 314, 336; Wigmore on Evidence (2d Ed.) Vol. 5, §§ 2487-2498, and Chapter 88.

[9] Jones, Commentaries on Evidence, (2d Ed.), § 256; *Von Ette's Case*, 223 Mass. 56; *Mansiano* v. *Public Service Gas Co.*, 92 N. J. L. 322; *Humphrey* v. *Industrial Commission*, 285 Ill. 372; *Westman's Case*, 118 Me. 133.

that a finding must be supported by evidence.[10] Once the employer has carried his burden by offering testimony sufficient to justify a finding of suicide, the presumption falls out of the case. It never had and cannot acquire the attribute of evidence in the claimant's favor.[11] Its only office is to control the result where there is an entire lack of competent evidence. If the employer alone adduces evidence which tends to support the theory of suicide, the case must be decided upon that evidence. Where the claimant offers substantial evidence in opposition, as was the case here, the issue must be resolved upon the whole body of proof pro and con;[12] and if it permits an inference either way upon the question of suicide, the Deputy Commissioner and he alone is empowered to draw the inference; his decision as to the weight of the evidence may not be disturbed by the court.[13]

For these reasons we are of opinion the Court of Appeals erred in holding that as the evidence on the issue of accident or suicide was, in its judgment, evenly balanced, the presumption must tip the scales in favor of accident. The only matter for decision was whether the affirmative finding of suicide was supported by evidence. It is clear that it was so supported and that the court should therefore not have set aside the Deputy Commissioner's order.

The judgment must be reversed and the cause remanded for further proceedings in conformity with this opinion.

*So ordered.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*

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[10] *Crowell* v. *Benson*, 285 U. S. 22, 46, 49.

[11] Thayer, *ubi supra*, pp. 337, 339; Wigmore, *ubi supra*, Vol. 5, § 2487 (d).

[12] Thayer, *ubi supra*, p. 346.

[13] *Crowell* v. *Benson*, *supra*, 46; *Voehl* v. *Indemnity Insurance Co. of N. A.*, 288 U. S. 162, 166.